

SKATING-RINK LEASE

DATED JUNE 20, 2002

by and between

**THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE
IN CONSULTATION WITH
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
AS LANDLORD**

and

**FACILITY MANAGEMENT CORPORATION,
AS TENANT**

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SKATING-RINK LEASE

This Skating-Rink Lease (this “***Lease***”) is dated June 20, 2002, and is by and between the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance (“***DCAM***”), having a principal place of business at One Ashburton Place, 15th Floor, Boston, Massachusetts 02108-1511, in consultation with the Department of Environmental Management (“***DEM***”), having a principal place of business, for the purposes of this Lease, at the address set forth in §4.10, as landlord (“***Landlord***”), and FACILITY MANAGEMENT CORPORATION, a Massachusetts corporation, as tenant (“***Tenant***”), having a principal place of business at 17 Accord Park Drive, Norwell, Massachusetts 02061-1629.

PREAMBLE

The Senate and House of Representatives in General Court Assembled of the Commonwealth of Massachusetts (the “***General Court***”) in section 366 of chapter 159 of the Acts of 2000, as amended by section 30 of chapter 88 of the Acts of 2001 (the “***Enabling Legislation***”) granted DCAM, in consultation with the Department of Environmental Management, authority to lease Collins Moylan Memorial Rink, 1 Barr Avenue, Greenfield, Massachusetts 01301-1402 (hereinafter defined and referred to as the “***Premises***”) through a lease of ground and improvements, as more particularly described in the “Request for Proposals To Provide Long-Term Operation and Management Services and Capital Improvements for State-Owned Ice-Skating Rinks” (hereinafter defined and referred to as the “***RFP***”).

DCAM, in consultation with DEM, issued the RFP dated April 5, 2002, and amended the RFP on April 19, 2002, a copy of which is attached as ***Exhibit A***.

Tenant, in response to the RFP, submitted a proposal on May 3, 2002, (said proposal hereinafter called the “***Tenant’s Proposal***”).

Pursuant to the Enabling Legislation and the results of proposals solicited under the RFP, DCAM, in consultation with DEM, designated Tenant in a written instrument dated May 17, 2002 (the “***Designation***”), to be the tenant under the skating-rink lease contemplated by the RFP, subject to the negotiation of a skating-rink-lease document between Landlord and Tenant.

Landlord and Tenant have decided to effect their mutual intent as expressed in Tenant’s Proposal and the Designation by entering into this Lease.

Therefore, for consideration paid, the receipt and sufficiency of which are acknowledged, the parties to this Lease agree as follows:

1. DEFINITIONS.

The following terms, whenever capitalized and used in this Lease, shall have the following meanings:

“Additional Contamination” shall have the meaning set forth in §20.1.2.

“Additional Contamination Clean-up” shall have the meaning set forth in §20.1.2.

“Additional Rent” shall have the meaning set forth in §§4.3 and 4.4.

“Alteration” shall have the meaning set forth in §8.4.

“Alteration Standard” shall have the meaning set forth in §8.4(b).

“Approved Clean-up Costs” shall have the meaning set forth in §20.1.3(a).

“Arbitration” shall mean the procedure set forth in *Exhibit B*.

“Award” shall mean all compensation, sums, or anything of value awarded, paid, or received in a total or a partial Condemnation.

“Building” shall mean the structures and improvements located on the Land, any additional construction of structures and improvements on the Land, any restoration or replacement of structures and improvements on the Land, any alterations, additions, or improvements made to structures and improvements on the Land pursuant to the provisions of this Lease, and any new structures placed on the Land. When necessary for clarity, the term **“Old Building”** is used to describe the improvements on the Land as of the Commencement Date, and the term **“New Building”** is used to describe the improvements that may be constructed in accordance with to article 9 of this Lease. Also see the definition for Capital Program.

“Building Equipment” shall mean all equipment, including, without limitation, machinery, apparatus, fittings, plumbing equipment and fixtures, heating and air conditioning equipment and fixtures, and lighting fixtures, now or hereafter on the Premises and used in connection with the maintenance, repair, and/or operation of the Premises, but not including equipment used solely for construction of Building, and not including Tenant’s trademarks and service marks.

“Capital Program” shall have the meaning set forth in the RFP and in article 9, is described in *Exhibit G*, and may include a New Building. The Capital Program sets forth a program of building, grounds, and equipment development, redevelopment, remediation, upgrading, replacement, refurbishment, maintenance, and repair for the life of the Term.

“Claim(s)” shall have the meaning set forth in §20.6(a).

“Clean-up” shall have the meaning set forth in §20.1.1.

“Clean-up Cost Notice” shall have the meaning set forth in §20.1.3(a).

“Clean-up Costs” shall have the meaning set forth in §20.1.2.

“Commencement Date” shall be the date of execution of this Lease by the Commissioner of DCAM, being the date that appears on the cover page of this Lease and in the introductory paragraph on page 1 of this Lease.

“Condemnation” shall mean (i) the taking or condemnation by a Condemnor of the title to or the possession or use of all or part of the Premises by virtue of eminent domain or for any public or quasi-public use and (ii) a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

“Condemnor” shall mean any public or quasi-public authority, or a private corporation or an individual having the power of Condemnation.

“Construction Commencement Date” shall be 120 after the Commencement Date, as to the first component, stage, or phase of the Capital Program, and thereafter shall be set forth in the Plans and Specifications for each component, stage, or phase of the Capital Program, subject to extension for Force Majeure Events.

“Contamination” shall have the meaning set forth in §20.1.1.

“Contested Imposition” shall have the meaning set forth in §4.6.

“DCAM” shall have the meaning set forth in the introductory paragraph of this Lease.

“Default Rate” shall mean a fluctuating interest rate per annum equal to the sum of (i) the rate of interest published in the Wall Street Journal (Eastern Edition ISSN 0099-9660) as the Prime Rate, plus (ii) four percent.

“Deficiency” shall have the meaning set forth in §16.4.

“DEM” shall have the meaning set forth in the introductory paragraph of this Lease.

“Dispute Notice” shall have the meaning set forth in §20.1.3(a).

“Disputed Cleanup Costs” shall have the meaning set forth in §20.1.3(a).

“Environmental Materials” shall have the meaning set forth in §20.2(a).

“Environmental Report” shall have the meaning set forth in §20.1.1.

“Event of Default” or **“Events of Default”** shall have the meaning set forth in §16.1.

“Force Majeure Event” shall mean circumstances beyond the reasonable control of Tenant, including but not limited to, war; civil disturbance; explosion; earthquake; flood; labor dispute; or failure of any Governmental Authority to issue in a timely fashion a permit or approval necessary for construction or operation of improvements, but in the case of any component, stage, or phase of the Capital Program, only

if Tenant has submitted a timely, complete, and otherwise adequate application for such permit or approval.

“Full Operations Date” shall mean the first to occur of the following: (a) one hundred twenty days after the Construction Commencement Date (unless this date is extended as set forth in §3.2 because Tenant is unable, using all reasonable diligence, to substantially complete construction of the initial component, stage, or phase of the Capital Program and obtain a certificate of occupancy allowing the use of all or a substantial portion of the Building due to a Force Majeure Event), (b) the issuance of a certificate of occupancy allowing use of the Building for the Permitted Uses, or (c) actual use by Tenant of the Building for Permitted Uses (as opposed to construction activities).

“Full Rent Periods” shall have the meaning set forth in §4.1.

“General Court” shall have the meaning set forth in the preamble of this Lease.

“Governmental Authority” shall mean any governmental agency, department, division, commission, board, bureau, or instrumentality having competent jurisdiction over the Premises and/or over the Permitted Uses.

“Hazardous Materials” shall mean those substances defined or classified as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant,” or “toxic pollutant,” or otherwise denominated as hazardous, toxic, or a pollutant in: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (**“CERCLA”**); (B) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended (**“RCRA”**); (C) the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C, as amended (**“Chapter 21C”**); (D) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21E, as amended (**“Chapter 21E”**); (E) any other federal, state, or local law or ordinance addressing the protection of human health, safety, welfare, or the environment, as amended (**“Other Environmental Laws”**); or (F) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21C, Chapter 21E, or Other Environmental Laws, as amended.

“Immediate Family” shall mean, in relation to any individual, such individual’s spouse, descendants, parents, brothers, sisters, parents-in-law, brothers-in-law, sisters-in-law, and the descendants of brothers, sisters, brothers-in-law, and sisters-in-law.

“Impositions” shall have the meaning set forth in §4.3.

“Insurance Proceeds” shall have the meaning set forth in §13.3.1.

“Institutional Lender” shall mean any savings bank, bank or trust company, savings and loan association, merchant banking company, charitable foundation, insurance company, college or university, governmental pension or retirement funds or systems, self-managed pension trusts, or pension or retirement funds or systems of which any of the foregoing shall be trustee, provided the same is organized

under the laws of the United States of America or of any of the United States, or a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1954, as amended, provided such Trust is listed on the American Stock Exchange, the New York Stock Exchange, or Nasdaq, or any other person or entity approved as such by Landlord, which approval shall not be unreasonably withheld.

“Land” shall have the meaning set forth in §2.1.

“Landlord” shall have the meaning set forth in the introductory paragraph of this Lease.

“Landlord Indemnified Party” shall have the meaning set forth in §20.7(b).

“Landlord Released Party” shall have the meaning set forth in §20.7(a).

“Lease” shall have the meaning set forth in the introductory paragraph of this Lease.

“Legal Requirements” shall mean all present and future laws, acts, rules, requirements, orders, directions, ordinances, regulations, judgments, decrees, or injunctions of or by the Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Premises or any part of the Premises, or to any condition or use of the Premises, and all licenses, permits, and other governmental consents which are or may be required for the use and occupancy of the Premises for the Permitted Uses.

“Lump Sum Rent Payment” shall have the meaning set forth in §13.6.

“MCP” shall have the meaning set forth in §20.1.1.

“Minimum Annual Maintenance Amount” shall have the meaning set forth in §8.3.

“Minor Change” shall mean any change in a Permitted Use for a new use that is substantially similar to an existing Permitted Use at the Premises and does not materially alter the services, tenant mix, or overall character of the Premises or the ability of Tenant to provide first-class service to patrons of and visitors to the Premises.

“New Building” shall have the meaning set forth in the definition for Building.

“Notice of Election” shall have the meaning set forth in §16.5.

“Old Building” shall have the meaning set forth in the definition for Building.

“Outside Full Operations Date” shall have the meaning set forth in §3.2.

“Percentage Rent” shall have the meaning set forth in §§4.1.1 and 4.1.2.

“Permitted Mortgage” shall mean any mortgage which constitutes, or any security interest given in connection therewith which together constitute, a lien upon (a) this Lease and all of the leasehold estate created by this Lease, (b) any sublease permitted under this Lease and the subleasehold estate created by such sublease, or (c) Tenant’s interest in Building (including Tenant’s interest as sublessor in any present or future subleases, and any other interest of Tenant in Building Equipment), which mortgage complies with the requirements of article 15.

“Permitted Mortgagee” shall have the meaning set forth in §15.7.1.

(p) **“Permitted Uses”** of the Premises shall have the meaning set forth in §2.2.

“Plans and Specifications” shall have the meaning set forth in §9.1.

“Premises” shall have the meaning set forth in §2.1.

“Premises Revenues” shall have the meaning set forth in subsection 4.1.1.

“Release” shall have the meaning set forth in §20.1.1.

“Response Actions” shall have the meaning set forth in §20.1.1.

“RFP” shall have the meaning set forth in the preamble to this Lease.

“RIP” shall have the meaning set forth in §20.1.1.

“Site Plan” shall have the meaning set forth in §9.2.

“Sublease” shall mean any agreement, written or oral, by which any entity is given any rights of use or occupancy of, or any benefit flowing from, the Premises or any portion of the Premises, including a permit, license, or concession.

“Substantial Alteration” shall have the meaning set forth in §8.4.

“Survey” shall mean the plan prepared by (not applicable) for (not applicable) entitled “(not applicable),” dated (not applicable).

“Systems” shall have the meaning set forth in §8.3(d).

“**Tanks**” shall have the meaning set forth in §8.3(d).

“**Tenant**” shall have the meaning set forth in the introductory paragraph.

“**Tenant Indemnified Claim**” shall have the meaning set forth in §20.7(b).

“**Tenant Released Party**” shall have the meaning set forth in §20.6(a).

“**Tenant Releasing Party**” shall have the meaning set forth in §20.7(a).

“**Tenant’s Maintenance Obligations**” shall have the meaning set forth in §8.3.

“**Tenant’s Mortgage Rate**” shall mean the rate of interest that Tenant is required to pay from time to time under Tenant’s Permitted Mortgage. Tenant shall notify **both** DCAM **and** DEM of such rate (or any change therein) promptly after it is established under the Permitted Mortgage. Upon the written request of DCAM and/or DEM, Tenant shall provide **both** DCAM **and** DEM with a copy of the loan documentation under which provision is made for Tenant’s Mortgage Rate. If there is no Permitted Mortgage in existence, “Tenant’s Mortgage Rate” shall mean a fluctuating interest rate per annum equal to the sum of (i) the rate of interest published in the Wall Street Journal (Eastern Edition ISSN 0099-9660) as the Prime Rate, plus (ii) two percent.

“**Tenant’s Proposal**” shall have the meaning set forth in the preamble of this Lease.

“**Term**” shall have the meaning set forth in §3.1.

“**Termination Date**” shall mean the earliest to occur of (i) the last day of the Term, (ii) the date of termination of the Lease by Landlord as the result of an Event of Default, or (iii) the date of termination pursuant to articles 13 and 14.

“**Work**” shall have the meaning set forth in §§13.1 and 14.2.2.

2. LEASE OF PREMISES.

2.1. Premises. Landlord, for and in consideration of the rents, covenants, and agreements herein contained on the part of Tenant to be paid, kept, and performed, leases, rents, lets, and demises unto Tenant, and Tenant takes, accepts, hires, and leases from Landlord, upon and subject to the conditions expressed in this Lease, all those certain plots and parcels of land with the improvements that are located on them in the Town of Greenfield, County of Franklin, and Commonwealth of Massachusetts, as shown in **Exhibit C** and more particularly described in **Exhibit D**, which land is hereinafter called the “**Land**,” and which Land, together with the Buildings, Building Equipment, and any other improvements thereon, is hereinafter referred to as the “**Premises**.” Tenant shall have as appurtenant to the Premises the right of public vehicular access to and egress from Barr Avenue through the curb cuts shown on the Survey.

SUBJECT, however, to:

- (a) the state of facts shown on the Survey.
- (b) Covenants, restrictions, easements, agreements, and reservations of record, as of the Commencement Date.
- (c) Present and future building restrictions and regulations of the Governmental Authority, and present and future zoning laws, ordinances, resolutions, and regulations of the Governmental Authority, and all present and future ordinances, laws, regulations, and orders of the Governmental Authority, so long as they permit use of the Premises for Permitted Uses.
- (d) Any violation of any law, ordinance, order, or requirement of the Governmental Authority that may exist on the Commencement Date that was caused by operations on any portion of the Premises on the date that immediately precedes the Commencement Date.
- (e) The condition and state of repair of the Premises as the same may be on the Commencement Date.
- (f) All taxes, duties, assessments, special assessments, water charges and sewer rents, and any other Imposition, accrued or unaccrued, fixed or not fixed, from and after the Commencement Date, and all such taxes related to operations on any portion of the Premises on the date that immediately precedes the Commencement Date.

The metes-and-bounds description of the Premises is set forth on ***Exhibit E***, and the boundary-line drawing of the Premises is set forth on ***Exhibit F***.

The Premises are leased on an “as-is” basis. Tenant, at Tenant’s sole expense and cost (subject to §20.1.3), shall timely perform and timely complete all building, grounds, and equipment development, redevelopment, remediation, upgrading, replacement, refurbishment, maintenance, and repair, all as set forth in the RFP and in this Lease, especially in this Lease’s articles 8 and 9, and in this Lease’s ***Exhibit G***. Throughout the Term, DEM and other agencies of Landlord, and DEM’s and such other agencies’ employees, agents, and contractors, shall have vehicular and pedestrian access, *via* the accessways, driveways, and walkways of the Premises, to any land that is owned by Landlord and is adjacent to and abuts the Premises.

2.2. Permitted Uses. The Permitted Uses of the Premises include the following uses, duties, covenants, obligations, standards, and other provisions:

(a) **Public Program.** The Premises shall be occupied and used for the purpose of operating a public ice-skating-rink program for all citizens of the Commonwealth. This includes the use and care of equipment and materials incidental to the program that may be assigned to Tenant by DEM, but that shall remain the property of Landlord.

(b) **Operating Season.** The required minimal operating season is September 15 through April 15, both inclusive. Subject to the minimal-operating-season requirement, Tenant may keep the ice-skating rink open for as long a season as Tenant sees fit to meet demand, provided that the operating season shall not be less than six months per calendar year, and further provided that any ice-skating rink without below-slab insulation must be closed for a minimum of one month per year. Tenant may set hours of operation as Tenant sees fit, provided that the hours of operation are in compliance with local ordinances and state law.

(c) **Allocation of Ice-Time to User-Groups.** Ice-time at rinks shall be allocated to the following user-groups listed in priority order: (i) general-public skating; (ii) youth groups; (iii) high school hockey; (iv) adult organizations or informal groups. Ice-time may be allocated at the discretion of Tenant with the following restrictions: general-public-skating sessions must be scheduled, ***at a minimum***, 16 hours per week, in two-hour increments, as follows: Monday – Friday, mornings; Saturday and Sunday, afternoons; if the foregoing does not encompass the requisite minimum of 16 hours per week (i.e., at least 8 two-hour sessions per week), such additional two-hour session(s) necessary to achieve the minimum general-public-skating-session weekly requirement shall be scheduled by Tenant on such day(s) and at such time(s) as Tenant may reasonably determine. DEM must be notified and approve of the cancellation of public-skating sessions. Ice-time allocation for uses other than general-public skating are subject to the prior written approval of DEM; Tenant shall propose ice-time allocation for each fiscal year (July 1 through June 30) during the Term; Tenant shall submit such proposal to DEM not earlier than March 1 and not later than March 31 immediately preceding of the fiscal year for which the proposal is submitted; if Tenant's proposal is not approved by DEM in writing by April 30 immediately following its submission, the proposal shall be deemed to have been ***disapproved*** by DEM, in which event Tenant and DEM shall promptly meet or communicate by telephone, fax, email, or overnight delivery service in an effort to resolve the dispute, but if DEM and Tenant are unable to resolve the dispute by May 15, either Landlord *or* Tenant may submit such dispute to Arbitration in accordance with ***Exhibit B***. If Tenant desires to change ice-time allocation for uses other than general-public skating, such change shall be subject to the prior written approval of DEM, and Tenant shall submit a written request for such approval to DEM. If Tenant's proposal is not approved by DEM in writing within thirty days after such submission, the proposal shall be deemed to have been ***disapproved*** by DEM, in which event Tenant and DEM shall promptly meet or communicate by telephone, fax, email, or overnight delivery service in an effort to resolve the dispute, but if DEM and Tenant are unable to resolve

the dispute within fifteen days, either Landlord *or* Tenant may submit such dispute to Arbitration in accordance with ***Exhibit B***.

(d) **Existing Ice-Time Schedules and Users.** Tenant shall use Tenant's best efforts to honor the ice-time schedules that exist, as of the Commencement Date.

(e) **Equal Opportunity and Equal Access for Youths of Each Gender.** In accordance with the Enabling Legislation, throughout the Term, Tenant shall make every effort to balance the ice-allocation needs of long-established youth organizations and newly-formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

(f) **Annual Ice-Schedule Meetings.** Tenant shall hold an annual scheduling meeting during each spring of the Term. This meeting shall be open to the public, and the purpose, place, and time of the meeting shall be advertised, at least one month in advance, but not more than six weeks in advance, in a local (i.e., "local" as to the address of the Premises) newspaper of general circulation. The advertisement shall include, in reasonable detail, any proposed change in the scheduling process. Copies of the advertisement, the scheduling-meeting agenda, and any proposed scheduling-procedural change shall be sent to DEM at least two weeks before the scheduling meeting.

(g) **Food and Skate-Shop Operation and Control.** Tenant may operate and control the permitted food and skate-shop activities, or Tenant may enter into subleases, licenses, or service agreements with third parties for the operation of such permitted activities, provided that Tenant shall have first obtained the prior written approval of DEM, which approval shall not be unreasonably withheld, delayed, or conditioned.

(h) **Special Events.** Special events that are held at the facilities may not be offensive to the public and may not include activities that cause damage to the Premises or equipment. Activities may not include events that use or involve internal-combustion engines or the application of any bondable coating or other artificial material applied to surfaces. All special events must be in compliance with federal, state, and local laws, and with DEM regulations. Not less than five business days before each such special event, Tenant's written notice of the special event, accompanied by reasonably descriptive plans therefor, must be received by DEM, addressed to the DEM Regional Headquarters, Attention: Regional Rink Representative.

(i) **Meeting Room.** DEM shall have priority use of the Premises meeting room from 8:00 AM to 5:00 PM, Monday through Friday, and Thursday evenings from 6:00 PM to 10:00 PM, with advance notice of not less than forty-eight hours. All DEM use shall be granted without charge.

(j) **DEM Use.** DEM shall have the right to use the Premises without charge during any period when the Premises are not in use, at such times and upon such terms as may be mutually agreed upon.

(k) **Ice-Time Fees and Charges.** For the first thirty-six months of the Term, the fee to be charged for ice-time to each group user shall not exceed \$185 per 50-minute ice session, and admission fees for the required public-skating sessions shall not exceed \$6.00 for adults (i.e., persons older than 18-years-of-age) and \$3.00 for children (i.e., persons 18-years-of-age or under). If Tenant proposes to increase any ice-time fee, Tenant shall submit a letter of request to DEM. In considering each request, DEM will consider all factors that DEM deems relevant, including, without limitation, the following:

- (i) Capital investments made by Tenant to the Premises;
- (ii) Ice-time fees charged by other rinks (public and private) within reasonable proximity of the Premises;
- (iii) The length of time since the last fee increase, if any; and
- (iv) Fees charged at other so-called DEM ice-skating rinks, it being a goal of DEM to ensure consistency in fees charged at such rinks.

No ice-time-fee increase shall be charged until approved, in writing, by DEM. DEM shall not unreasonably withhold, condition, or delay such approval.

(l) **Special-Events Receipts.** Tenant shall share, with the sponsor, spectator-admission receipts for special events sponsored by nonprofit associations and organizations. Tenant, at Tenant's discretion, may waive collection of Tenant's percentage if the sponsor is nonprofit or if the event is an MIAA high-school-hockey championship game.

(m) **Display of Signs, Advertisements, Posters, and Notices.** No sign, advertisement, poster, or notice shall be displayed on the outside of the Building without prior, written approval from DEM, which approval shall not be unreasonably withheld, delayed, or conditioned. All DEM signs shall remain in place, unless prior written approval is received from DEM. No sign, advertisement, poster, or notice shall be attached to interior windows, walls, or doors. Board advertisement requires the prior written approval by DEM, provided that it shall not be offensive to the public and shall not include the advertising of alcoholic beverages or tobacco products. With the prior written approval by DEM, special events for adults may be sponsored by manufacturers and/or distributors of alcoholic beverages.

(n) **Monthly and Fiscal-Year Statistical Reports; Monthly Financial Statements and Audited Fiscal-Year Financial Statements.** Tenant shall submit monthly statistical reports and financial statements in accordance with subsection 4.1.3. A fiscal-year

(July through June) statistical report and an **audited** fiscal-year financial statement, each for the fiscal year most recently ended, shall be submitted by Tenant to DEM no later than September 1. Each monthly and fiscal-year statistical report shall be on a form provided by DEM and shall be certified by Tenant, under penalties of perjury, as being accurate, true, and complete, to the best of Tenant's knowledge, belief, and ability to ascertain. Each audited fiscal-year financial statement shall be prepared and attested to by a certified public accountant (such certification being by the Commonwealth of Massachusetts), shall be based upon an **audit** by such certified public accountant, and shall be prepared and submitted in accordance with Generally Accepted Accounting Principles ("GAAP"). At a **minimum**, each audited fiscal-year financial statement shall set forth, with reasonable detail, (a) the sources of the Premises Revenues, (b) the respective amounts received from such sources, (c) the exclusions from computations of Percentage Rent permitted by subsection 4.1.2 and claimed by Tenant, (d) Capital Program expenditures, and (e) maintenance expenditures in accordance with article 8. Each monthly and annual statistical report and financial statement shall reflect business activities, operations, and financial matters, as the case may be, at the Premises, and if Tenant shall submit consolidated statistical reports and/or financial statements that reflect business activities, operations, and financial matters of Tenant, or of Tenant and affiliates of Tenant, at sites in addition to the Premises, the business activities, operations, and financial matters of Tenant at the Premises shall be adequately and sufficiently delineated by Tenant in such statistical reports and/or financial statements to reasonably enable compliance with this Lease.

(o) **Authorized Employees.** Tenant shall provide DEM with a written a list of all employees who are authorized by Tenant to have keys and/or access to the Premises. Tenant shall keep this written list current. Tenant shall provide Tenant's employees with uniforms that clearly identify the operational and organizational name of Tenant.

(p) **Annual Meeting.** An annual meeting shall be held between Tenant and DEM to discuss programs, contract compliance, and other pertinent Premises issues. The meeting shall be held in May, with additional meetings to be held as needed.

(q) **Law Enforcement.** State, local, and environmental police officers shall have the authority to enforce DEM's rules and regulations and to assist in Premises enforcement activities when available and at no expense to DEM or DCAM. All costs shall be the responsibility of Tenant. Tenant shall be responsible to ensure adequate law enforcement when breach of the peace can be reasonably anticipated.

3. TERM.

3.1. Term. The term of this Lease (the "***Term***") shall commence on the Commencement Date and end at 11:59 PM on the date preceding the twenty-fifth anniversary of the Full Operations Date (the "***Termination Date***").

3.2. Extension of Full Operations Date. If a Force Majeure Event occurs that prevents Tenant (using reasonable and diligent efforts) from substantially completing construction of the initial

component, stage, or phase of the Capital Program and obtaining a Certificate of Occupancy allowing the use of all or a substantial portion of the Building by the Full Operations Date, the Full Operations Date shall be extended by the length of delay caused by said Force Majeure Event; however, during such extension period, Tenant shall diligently pursue all efforts within Tenant's reasonable control (and not impaired or precluded by a Force Majeure Event) to complete such component, stage, or phase and obtain a Certificate of Occupancy therefor. In no event shall the Full Operations Date be extended past the date that is two years after the Construction Commencement Date as to the initial component, stage, or phase of the Capital Program without counting any extensions of the Construction Commencement Date due to Force Majeure (the "***Outside Full Operations Date***"), whether or not the need for any such extension is within the control of Tenant. Any dispute between the parties concerning the occurrence of the Full Operations Date shall be resolved by Arbitration.

4. RENT.

4.1. Percentage Rent. Commencing upon the Commencement Date and continuing until the end of the Term, Tenant shall pay DEM the ***Percentage Rent***, as provided in subsection 4.1.1, for each of the Full Rent Periods during the Term. The first Full Rent Period shall commence on the Commencement Date and shall end on the date immediately preceding the first anniversary of the Commencement Date, and each succeeding Full Rent Period shall commence on each succeeding anniversary of the Commencement Date.

4.1.1. Monthly Percentage Rent Installments. Each payment of Percentage Rent shall be made, without notice, in a monthly installment within fifteen days following the last day each and every calendar month of each Full Rent Period of the Term. Percentage Rent shall be based upon the actual gross revenues (the "***Premises Revenues***") from all sources with respect to the Premises during the most recently ended calendar month, regardless of whether the Premises Revenues are initially received by Tenant or by a subtenant, a licensee, or a concessionaire of Tenant. The amount of Percentage Rent shall be ____% of the Premises Revenues. If the Commencement Date does not occur on the first day of a calendar month, the first and final installments of Percentage Rent shall be based upon the Premises Revenues during the resulting shorter period, e.g., if the Full Operations Date were November 12, the first Percentage Rent installment would be based upon the Premises Revenues from November 12 through November 30, both inclusive, with the first installment being payable not later than December 15, and the final Percentage Rent installment would be based upon the Premises Revenues from November 1 through November 11, both inclusive, with the final installment being payable not later than November 26.

4.1.2. Exclusions from Computations of Percentage Rent. The Premises Revenues that are used to compute Percentage Rent shall *not* include the following: (a) the portion of any service, rental, or other fee, charged to and paid by any subtenant, licensee, or concessionaire of Tenant, that is based upon the Premises Revenues received by such subtenant, licensee, or concessionaire, and that is equal to a percentage of such Premises Revenues that is no greater than the percentage stipulated for Percentage Rent in subsection 4.1.1; (b) the sale (but not the redemption) of gift certificates; and (c) gross-receipts, sales, and value-added taxes

collected from consumers and paid to a governmental taxing authority. Where coupons or other discount promotions are used, only the actual amount paid by the consumer shall be included in the Premises Revenues that are used for computation of Percentage Rent.

4.1.3. Monthly and Fiscal-Year Statistical Reports and Financial Statements; Verification and Audit. Tenant shall submit to DEM, with each monthly installment of Percentage Rent that is required by subsection 4.1.1, a monthly statistical report and a monthly financial statement, each for the month for which the monthly installment of Percentage Rent is paid. Each monthly statistical report and each monthly financial statement shall be certified by Tenant, under penalties of perjury, as being accurate, true, and complete, to the best of Tenant's knowledge, belief, and ability to ascertain. Each monthly and fiscal-year statistical report shall be on a form provided by DEM. Each monthly financial statement shall be prepared and submitted in accordance with GAAP. At a *minimum*, each monthly financial statement shall set forth, with reasonable detail, (a) the sources of the Premises Revenues, (b) the respective amounts received from such sources, (c) the exclusions from computations of Percentage Rent permitted by subsection 4.1.2 and claimed by Tenant, (d) Capital Program expenditures, and (e) maintenance expenditures in accordance with article 8. Each monthly and annual statistical report and financial statement shall reflect business activities, operations, and financial matters, as the case may be, at the Premises, and if Tenant submits consolidated statistical reports and/or financial statements that reflect business activities, operations, and financial matters of Tenant, or of Tenant and affiliates of Tenant, at sites in addition to the Premises, the business activities, operations, and financial matters of Tenant at the Premises shall be adequately and sufficiently delineated by Tenant in such statistical reports and/or financial statements so as to reasonably enable compliance with this Lease. Tenant shall submit fiscal-year statistical reports and audited fiscal-year financial statements in accordance with subsection 2.2 (n). The Percentage Rent, the Premises Revenues, the monthly statistical reports, the monthly financial statements, the fiscal-year statistical reports, and the audited fiscal-year financial statements each shall be subject to verification and audit by DEM and/or by any other agency of Landlord or a contractor of Landlord. Tenant shall pay any deficiency in any installment of Percentage Rent within ten days after Tenant becomes aware of such deficiency or within ten days after written demand therefor by DEM, whichever occurs first, and if not so paid, shall be payable as Additional Rent with interest at the Default Rate. The failure of DEM to make such demand shall not be deemed a waiver of that deficiency or of any future deficiency. Any excess in any installment of Percentage Rent shall be credited to the next monthly installment due.

4.2 Percentage Rent Absolutely Net. It is the purpose and intent of Landlord and Tenant that the Percentage Rent payable under this Lease shall be absolutely net to Landlord so that this Lease shall yield to Landlord the specified Percentage Rent in each year during the Term from and after the Commencement Date, free of any charges, assessments, Impositions (as defined in §4.3), or deductions of any kind charged, assessed, or imposed on or against the Premises, and without abatement, deduction, or set-off by Tenant, except as otherwise specifically provided in §§4.1.2, 14.2.5, and 20.1.3, and Landlord shall not be expected or required to pay any such charge, assessment, or Impositions, or be under any obligation or liability under this Lease except as herein expressly set forth, and that all costs, expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all alterations,

repairs, reconstruction, and replacements that are provided by this Lease and that may arise or become due during the Term shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations, except for any which are incurred as a result of the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, or contractors.

4.3 Additional Rent. From and after the Commencement Date, Tenant shall pay as additional rent ("***Additional Rent***") during the Term, before any fine, penalty, interest, or cost may be added or imposed for non-payment, all properly and lawfully imposed taxes (including personal property taxes and taxes on rents, leases, or occupancy, if any), assessments, special assessments, water and sewer rents, rates, and charges, charges for public utilities, excises, levies, license and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time prior to or during the Term was or may be properly and lawfully assessed against, or become properly and lawfully due and payable out of or in respect of, or become a lien on, the Premises, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "***Impositions***" and individually as "***Imposition***") provided, however, as follows:

4.3.1 Payment in Installments. If, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in installments, and in such event, Tenant shall pay such installments as may become due during the Term as the same respectively become due and before any fine, penalty, further interest or cost may be added, but shall, in consideration of such privilege, pay the balance of such Imposition not later than one year prior to the last day of the Term, subject to §4.5.2 below to the extent such Imposition covers any period prior to or after the Term.

4.3.2 Apportionment of Imposition. Any Imposition, (including Impositions which have been converted into installment payments by Tenant, as referred to in §4.3.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Term, and a part of which is included in a period of time before or after the expiration of the Term, shall (whether or not such Imposition shall be assessed, imposed upon or in respect of, or become a lien upon the Premises, or shall be payable, during the Term) be adjusted between DEM and Tenant as of the commencement and expiration of the Term, so that Tenant shall pay that portion of such Imposition which that part of such fiscal periods included in the Term bears to such fiscal period, and DEM shall pay the remainder of such Imposition.

Beginning on the Commencement Date and continuing through June 30, 2004, Tenant shall pay \$1,551 per month as Additional Rent for the costs of a Tax Exempt Lease Purchase ("TELP") payment arising from the installation of energy-conservation improvements at the Premises in accordance with a contract by and between Landlord and Northeast Energy Savings Company that was effective on

December 29, 1993. If the Commencement Date is not on the first day of the month, the first TELP payment by Tenant shall be prorated accordingly.

From and after the Commencement Date, Tenant shall pay without notice (except as specifically provided in §7.1 below) and without abatement, deduction, or set-off, as Additional Rent, all sums, Impositions, costs, expenses, and other payments that Tenant assumes or agrees to pay in any of the provisions of this Lease, and in the event of any non-payment of Additional Rent, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein, at law, or in equity in the case of non-payment of Percentage Rent.

4.4 Additional Rent Exclusions. Nothing herein contained in this Lease shall require Tenant to pay income taxes assessed against Landlord, capital levy, excess profits, gift, estate, succession, inheritance, or transfer taxes of Landlord, or corporation, franchise, or income taxes imposed upon any corporate owner of the Land; provided, however, that if, at any time during the Term, (i) the methods of taxation that are prevailing on the Commencement Date shall be altered so as to cause the whole or any part of the Impositions to be levied, assessed, and imposed on the rents that are received by DEM under this Lease, or (ii) if all or any part of any tax, assessment, levy, imposition, or charge, in lieu of or in substitution for the Impositions, shall be measured by or be based, in whole or in part, upon the Premises and shall be imposed upon Landlord, then such tax, assessment, levy, imposition, or charge, to the extent that it is so measured or based, shall be deemed to be included within the term "Impositions" for the purposes of this Lease, to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same, as provided in this Lease with respect to the payment of Impositions.

4.5 Payments. From and after the Commencement Date, Tenant shall pay all such Impositions directly to the taxing authority and shall deliver to DEM photocopies of the receipted bills or other evidence satisfactory to DEM showing such payment, promptly after such evidence shall have been received by Tenant.

4.6 Contests. If Tenant so desires, Tenant may contest the validity or amount of any Imposition, in which event Tenant may defer the payment of such Imposition (the "**Contested Imposition**") during the pendency of such contest; provided that before the Contested Imposition shall have become due, Tenant shall have deposited with DEM an amount equal to the Contested Imposition that shall be applied to the payment of the Contested Imposition when the amount of the Contested Imposition shall be finally fixed and determined. In lieu of such cash deposit, Tenant may deliver to DEM a bond in such amount, form, and substance that are reasonably satisfactory to DEM and issued by a [surety licensed to do business in Massachusetts](#), or other collateral reasonably acceptable to DEM. Cash must be deposited in a segregated, interest-bearing account (which may be with an escrow agent), with interest to be added to the deposit and distributed with it. Tenant may direct DEM (or escrow agent) to pay the Contested Imposition with deposit funds. Notwithstanding the foregoing, no Contested Imposition shall remain unpaid for such length of time as shall permit the Premises, or any part of the Premises, to be sold, or the lien created by the Contested Imposition to be foreclosed for the non-payment of the Contested Imposition; DEM may, on five business days written notice to Tenant, pay the Contested Imposition out of the sums so deposited (or direct the escrow agent to make such payment) in case of

undue delay in the prosecution of said proceedings, or if the protection of the Premises or of Landlord's interest therein, in the reasonable judgment of DEM, shall require such payment. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to DEM, and if not so paid within five days after DEM's invoice, shall be payable as Additional Rent with interest at the Default Rate.

4.7 Assessment Reduction. If Tenant so desires, Tenant may endeavor, at any time or times, to obtain a lowering of the assessed value of the Premises for the purpose of reducing taxes thereon, and in such event, DEM shall offer no objection and, at the request of Tenant, shall cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant may institute abatement proceedings for that purpose, and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to an apportionment between Landlord and Tenant in the year in which the Term commences or ends, after deducting from such refund the costs and expenses, including reasonable legal fees, incurred in connection with obtaining such refund.

4.8 Save Harmless. Landlord shall not be required to join in any action or proceeding referred to in §§4.6 or 4.7 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord, Tenant agreeing to save Landlord harmless from all costs, expenses, claims, loss, or damage by reason of, or in connection with, any such action or proceeding.

4.9 No Release of Obligations. Except to the extent provided in articles 13 and 14, and in §20.1.3, (a) no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary shall permit Tenant to quit or surrender the Premises or this Lease, or shall relieve Tenant from Tenant's liability to pay the Percentage Rent, Additional Rent, and other charges under this Lease, or shall relieve Tenant from any of Tenant's other obligations under this Lease, and (b) Tenant waives any rights now or hereafter conferred upon, to the extent permitted by law, to quit or surrender the Premises or any part of the Premises, or to any abatement, set-off, reduction, or suspension of rent on account of any such act, happening, occurrence, or situation.

4.10. Address for Payments by Tenant to DEM. All payments of Percentage Rent and otherwise that are required by this Lease to be made by Tenant to Landlord or to DEM shall be delivered or sent, *via* first-class mail with the return address of Tenant on the envelope, by Tenant to the following address:

Rink Program Office
Division of Forest and Parks
Department of Environmental Management
131 Barnum Road, Building 3701

5. INSURANCE.

Tenant, at Tenant's cost, shall maintain insurance as follows:

5.1. Public Liability and Property Damage Insurance. Tenant shall maintain commercial general liability insurance on an occurrence basis insuring against all claims and demands against, and liability of, Tenant and/or Landlord for personal injury and property damage arising out of and in connection with the Premises or Tenant's use or occupancy of the Premises, in standard form to afford protection in an amount not less than \$2,000,000 combined single limit for personal and bodily injury and death, and for property damage, with a so-called "broad-form" endorsement, and a per-occurrence limit of not less than \$1,000,000 for bodily injury, property damage, and medical payments, which may be based upon a combination of primary coverage (plus umbrella coverage), which policy shall include operations and blanket contractual liability coverage which insures performance by Tenant of the indemnity provisions of article 12 and of sections 4.2, 17.2, 20.7, and 21.11.

5.2. Increase in Amount of Insurance. If, in the reasonable judgment of a Permitted Mortgagee or of DCAM or of DEM, the amount of public liability insurance coverage at the time is not adequate, Tenant shall increase the insurance coverage as required by a Permitted Mortgagee, DCAM, and/or DEM, provided, however, that if a request for an increase in coverage is not made by a Permitted Mortgagee, or by DCAM or by DEM as a result of any assignment or subletting, such request for an increase shall not be made more frequently than once in each two-year period and shall not require Tenant to carry more insurance than is customarily carried on comparable facilities in the municipality wherein the Premises are located.

5.3. Property Insurance – Personal Property. Tenant shall maintain on all Tenant's personal property on or about the Premises a policy of "all-risks" property insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of their full replacement value. Tenant shall use the proceeds from any such policy for the replacement of such personal property.

5.4. Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance on all boilers, air conditioning equipment, and other pressure vessels and systems located in, on, or above the Premises, such boiler and machinery insurance to have limits of not less than One Million Dollars per occurrence.

5.5. Property Insurance – Building and Improvements. Tenant shall maintain on the Building and other improvements that are part of the Premises a policy of "all-risks" property insurance in an amount not less than 100% of the full replacement value of the Building and such other improvements, and with the deductible not to exceed the lesser of \$10,000 or 1% of the policy face value, and containing a replacement cost coverage endorsement, an agreed amount endorsement waiving all co-insurance provisions, and a "building ordinance coverage" endorsement. Such insurance shall also include, if

applicable, flood and earthquake perils in such amounts and with such deductibles as are approved by **both** DCAM **and** DEM, which approval shall not be unreasonably withheld.

5.6. Workers Compensation Insurance. If applicable, Tenant shall maintain Worker's Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 per disease policy limit in respect of Tenant's employees.

5.7. Professional Liability Insurance. If Tenant undertakes the Additional Contamination Clean-up (as defined in §20.1.2), Tenant shall maintain, or shall cause to be maintained by Tenant's environmental consultant or other third party professionals employed by or at the direction of Tenant for the purpose of executing the Additional Contamination Clean-up, professional liability insurance with a pollution endorsement, insuring, on an occurrence basis, bodily injury, property damage, and environmental contamination arising out of the acts, errors, and omissions of the environmental consultant or such other third party professionals. Such insurance shall be in the amount of one million dollars for each claim and three million dollars in the aggregate, and shall cover all occurrences during the execution of the Additional Contamination Clean-up. Coverage shall include claims based upon or arising out of any negligent acts committed by such environmental consultant or other third party professionals in connection with underground storage tanks.

5.8. Replacement Value. The "full replacement value" to be insured under the policies referred to in §§5.3 and 5.5 shall be determined by the company issuing the insurance policy at the time the policy is initially obtained and shall be evidenced by an agreed amount endorsement. Not more frequently than once every two years, either party shall have the right to notify the other party that it elects to have the replacement value redetermined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination.

5.9. Waiver of Subrogation. Landlord and Tenant release each other and their respective authorized representatives from any claims for damage to any person, to the Premises, and to the fixtures, personal property, Tenant's improvements, and Landlord's and Tenant's alterations in, or on, the Premises that are caused by, or result from, risks insured against under fire insurance with the broadest form of property insurance generally available on properties similar to the Premises, whether or not actually carried by the other party. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Tenant acknowledges that Landlord is self-insured and that Landlord is not required by this Lease to procure or maintain insurance of any kind.

5.10. Insurance Companies. All insurance required under this Lease shall be issued by insurance companies authorized to do business in Commonwealth of Massachusetts, with a claims paying ability rating of A- or better and a financial class of V or better, as rated in the most recent edition of Best's Insurance Reports.

5.11. Payment of Proceeds. Any policies of insurance of the character described in §§5.4 and 5.5 shall expressly provide that any losses under such policies shall be adjusted with and approved by DCAM, DEM, Tenant, *and* the holder of any Permitted Mortgage, as their interests may appear. All such insurance shall be carried in the name of Landlord, Tenant, all Permitted Mortgagees, as their interests may appear, and loss such policies, if in the amount of \$300,000 or less, shall be paid to Tenant for application by Tenant to restoration and repair of the Building or, if in an amount in excess of \$300,000, shall be paid to DEM on behalf of the holders of any Permitted Mortgage, as their respective interest may appear pursuant to a standard loss payable to mortgagee clause, without contribution if obtainable, and on behalf of Landlord and Tenant, as their respective interests may appear. If paid to Tenant, such insurance proceeds shall be held by Tenant in trust for the purpose of paying the cost of such restoration and repair. If paid to DEM (whether paid to DEM on behalf of Landlord and Tenant or the holders of any Permitted Mortgages), DEM shall hold, apply, and make available to Tenant the amount of such insurance proceeds so paid in the manner set forth in §13.3, and DEM may deduct from such insurance proceeds any reasonable out-of-pocket expenses incurred by Landlord (including by DCAM and/or by DEM).

5.12. Default or Termination. In the event of a default by Tenant under any of the provisions of article 16 beyond the applicable notice and cure periods, or of the termination of this Lease for any reason whatsoever, DEM shall:

(a) Refrain from paying to or for the benefit of Tenant any insurance proceeds then or thereafter in the hands of DEM until DEM shall have received such proof as DEM may reasonably require that the specified default has been cured;

(b) If the holder of a Permitted Mortgage shall become entitled to receive the insurance proceeds under the provisions of §13.5, DEM shall refrain from paying any insurance proceeds to or for the benefit of Tenant and shall make such net insurance proceeds available to or for the benefit of the holder of the Permitted Mortgage in the same manner as such proceeds would have been available to or for the benefit of Tenant; and

(c) If (i) this Lease shall have terminated, and (ii) either the holder of the Permitted Mortgage has no right to a new lease under the provisions of §15.10 or, having such right, shall fail to exercise it within the time limited therefor, DEM shall retain the insurance proceeds then in the hands of DEM.

In the event of the exercise by the holder of a Permitted Mortgage of a right to receive a new lease on the same terms and conditions, pursuant to §15.10, then upon the execution and delivery of said new lease any amounts held by DEM shall be deemed to be held pursuant to the terms of the new lease.

Landlord shall be protected in acting upon any notice, certificate, document, or other proof believed by Landlord to be genuine and to have been signed by the proper party or parties, or by a person authorized to act on such proper party's or parties' behalf. Landlord may consult with counsel and shall not be liable for any action taken or suffered by Landlord in good faith in accordance with the written advice of such counsel.

5.13. Certificates of Insurance, Payment Evidence. Concurrently with the execution and delivery of this Lease and not less than thirty days prior to the expiration dates of the expiring policies furnished pursuant to this article 5, certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to **both DCAM and DEM** of such payment shall be delivered by Tenant to **both DCAM and DEM** at the address set forth in §4.10.

5.14. Separate Insurance. Tenant shall not take out separate insurance concurrent in form, or contributing in the event of loss, with that required in this article 5 to be furnished by, or which may reasonably be required to be furnished by, Tenant, unless Landlord is included therein as the insured, with loss payable as in this Lease provided. Tenant shall immediately notify **both DCAM and DEM** of the taking of any such separate insurance and shall deliver the certificate or certificates of insurance as provided in §5.13.

5.15. Blanket Insurance. Nothing in this article 5 shall prevent Tenant from taking out insurance of the kind and in the amount provided for under this article 5 under a blanket insurance policy or policies that covers or cover other properties owned or operated by Tenant as well as the Premises; provided, however, that any such policy of blanket insurance of the kind provided for by §5.5 shall specify, or Tenant shall furnish DCAM, DEM, **and** the holder of any Permitted Mortgage with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Building, which amount shall not be less than the amount required to be carried by §5.5, and shall not contain any clause that would result in the insured under such policies being required or permitted to carry insurance with respect to the property that is covered by such policy in an amount less than any specific percentage of the full insurable value of such property that is required in order to prevent the named insured from becoming a co-insurer of any loss with the insurer under such policy. Tenant covenants to furnish to **both DCAM and DEM**, and to the holder of any Permitted Mortgage copies of the schedule or make-up of all property affected by any such policy of blanket insurance within thirty days after the filing of such schedule or make-up with any insurance-rate-making body.

5.16. Notice of Cancellation. Each certificate of insurance delivered under this Lease, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty days prior written notice to **both DCAM and DEM** and to any mortgagee named in such policy.

6. SURRENDER ON TERMINATION.

6.1. Surrender; Removable Property. On the Termination Date, Tenant shall peaceably and quietly leave, surrender, and yield up unto DEM all and singular the Premises, broom-clean and free of occupants, in the condition to which Tenant is required to develop, redevelop, remediate, upgrade, replace, and refurbish the Premises, and in the condition in which Tenant is required to maintain and repair the Premises, all as set forth in the RFP and in this Lease, especially in this Lease's articles 8 and 9, and in this Lease's **Exhibit G**. On the Termination Date, Tenant also shall peaceably and quietly leave, surrender, and yield up unto DEM all and singular the trade fixtures and removable property, all in the

condition in which Tenant is required to furnish, upgrade, replace, refurbish, maintain, and repair the same, and each free and clear of any and all liens, charges, levies, and encumbrances of every kind and description. Tenant shall hold Landlord blameless and harmless, and shall fully defend and indemnify Landlord, under the direction of the Attorney General of the Commonwealth of Massachusetts, with respect to any such lien, charge, levy, or other encumbrance of any kind or description. Tenant, at no cost or expense to Landlord, shall promptly provide Tenant with all necessary and appropriate documentation, manuals, and title-transfer documents within thirty days after the Termination Date.

6.2. Title to the Building and Building Equipment. Throughout the Term and on the Termination Date, title to Building and to Building Equipment shall be in Landlord.

7. PERFORMANCE AND ENFORCEMENT OF TENANT'S OBLIGATIONS BY LANDLORD; PAYMENT OF ENFORCEMENT OR DEFENSE EXPENSES BY LOSING PARTY

7.1 Performance and Enforcement of Tenant's Obligations by Landlord. If, beyond the expiration of the applicable notice and grace period, Tenant fails to pay any Imposition or to make any other payment required to be made under this Lease, or Tenant defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition contained in this Lease, Landlord, without being under any obligation to do so, and without waiving such default, may make such payment and/or remedy such other default, for the account and at the expense of Tenant, immediately upon oral notice in the case of emergency or if necessary to protect public health or safety, or, in any other case, if Tenant fails to make such payment within fifteen days or to remedy such other default within thirty days (or such longer period as may be required, due to the nature of such other default, provided that Tenant commences and diligently prosecutes a cure within such thirty days) after DEM or DCAM notifies Tenant, in writing, of such nonpayment or other default.

7.2 Payment of Enforcement or Defense Expenses by Losing Party. All reasonable expenses incurred by Landlord and Tenant in enforcing this Lease, or in defending an action brought by the other party under this Lease, including all disbursements and reasonable counsel fees, shall be paid by the party against whom a final non-appealable judgment has been obtained within thirty days of such judgment, provided that if such enforcement or defense is by Landlord, it shall be under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3.

8. TENANT'S DUTY TO MAINTAIN.

8.1. Sole Responsibility on Tenant. Tenant has leased the Premises after a full and complete examination of the Premises, as well as the title to the Premises, and knowledge of the Premises' present uses and non-uses. Subject to the provisions of article 20, Tenant accepts the Premises in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law,

by Landlord (including by DCAM, and/or by DEM, and/or by their respective representatives) and without recourse to Landlord, as to the title to the Premises, the nature, condition, or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put. Throughout the Term, Landlord (including DCAM and DEM) shall not be required to furnish any services or facilities, or to make any repairs or alterations in or to the Premises, Tenant assuming the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including, but not limited to, the performance of all burdens running with the Land, subject to the provisions of §8.7 and article 20 below. All equipment, fixtures, and property of any kind that may be on or about the Premises and that are used in connection with the operation of the Premises or that are the property of Tenant shall be used at the sole risk of Tenant.

8.2. Use and Occupancy. From and after the Commencement Date, but subject to and taking into account the construction contemplated by article 9, Tenant shall use and occupy the

Premises as and for the Permitted Uses and for no other purpose unless Tenant is prevented from being open due to Force Majeure Events or when Tenant is making repairs or alterations required by this Lease.

Unless Tenant is prevented from being open due to Force Majeure Events or when Tenant is making repairs or alterations required by this Lease Following the Full Operations Date, Tenant shall operate the Premises so as to provide facilities that are substantially and materially consistent with the Permitted Uses, the RFP, and Tenant's Proposal, provided that if there is any conflict between any provision of this Lease and the RFP, or between any provision of this Lease and Tenant's Proposal, the conflict shall always be resolved in favor of such provision of this Lease. Notwithstanding the foregoing, Tenant may undertake Minor Changes in the Permitted Uses without the prior consent of DEM, and such Minor Changes shall be deemed Permitted Uses. Any change in Permitted Uses that is not deemed a Minor Change shall be subject to the prior written approval by DEM, such approval not to be unreasonably withheld, provided such change in use is consistent with the terms, conditions, and use limitations set forth in the RFP. For any change in use subject to the prior written approval of DEM, such change, upon such approval, shall be deemed a Permitted Use. DEM shall act to approve or disapprove any such change in use no later than sixty days following submission to DEM by Tenant in writing of Tenant's proposal for a change in use. If DEM fails to act within such sixty-day period either to approve or disapprove such proposed change in use, the proposed change in use shall be deemed *not* to be a Permitted Use, and DEM and Tenant shall promptly meet or communicate by telephone, fax, email, or overnight delivery service in an effort to resolve the dispute, but if DEM and Tenant are unable to resolve the dispute within thirty days after the expiration of such sixty-day period, either DEM *or* Tenant may submit such dispute to Arbitration in accordance with *Exhibit B*. Tenant shall not use or occupy, or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect to the Premises, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Tenant under this Lease.

8.3. Maintenance, Repairs. Subject to articles 13 and 14, Tenant shall take good care of the Premises, make all repairs to the Premises, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks and curbs in first-class order, repair, and condition ("*Tenant's Maintenance Obligations*"), reasonable wear

and tear excepted. To comply with Tenant's Maintenance Obligations, Tenant covenants to spend, on an annual basis, a minimum of the greater of \$20,000 or 1.5% of the Premises Revenues (whichever is higher, the "**Minimum Annual Maintenance Amount**"). If in any year the cost of Tenant's Maintenance Obligations exceeds the Minimum Annual Maintenance Amount, Tenant shall nevertheless be obligated, at Tenant's sole cost and expense, to undertake Tenant's Maintenance Obligations. Tenant's Maintenance Obligations to maintain and repair the Premises shall include but not be limited to the following:

- (a) The Premises shall be periodically policed to keep them reasonably free of litter;
- (b) The reasonable removal of snow and ice from the Premises;
- (c) Following the Commencement Date, all On-Site Subsurface Sewage Disposal Systems and grease traps, as those terms are defined in 310 CMR 15.000 ("**Systems**"), located on the Premises shall be maintained and inspected in compliance with 310 CMR 15.000. Following the Commencement Date, Tanks, as that word is defined in 527 CMR 9.00 ("**Tanks**"), located on the Premises shall be maintained and inspected in accordance with 527 CMR 9.00. Any hazardous waste-handling and -disposal permitted under this Lease and on the Premises shall be done in accordance with M.G.L. c. 21C and 310 CMR 3.00. This subparagraph (d) supplements, and should not be construed to limit in any way, Tenant's obligations under article 20;
- (d) The replacement, repair, and maintenance of the blacktopped pavement serving the Premises and light structures, as needed, in order to keep them in a first-class operating condition to benefit the public;
- (e) The ordinary maintenance, repair, and replacement of the septic system to which waste material empties from the Premises. Maintenance charges include but are not limited to municipal septic charges, and/or fees from dumping sewage, and the cost of pumping the system on a scheduled basis;
- (f) The maintenance in a reasonably clean and attractive condition of the restrooms located on the Premises, which shall be available for use by the public at all times during which the Premises shall be open to the public, except when prohibited by Force Majeure Events; And
- (g) The maintenance, repair, and replacement of major capital equipment and systems, including, without limitation, Building, Building Equipment, and ice-resurfacing machines and edgers (provided that the replacement of any ice-resurfacing machine and edger shall be with a non-fossil-fuel-consuming ice-resurfacing machine and edger), it being the intent of this Lease that Landlord obtain improved facilities at the end of the Term.

8.4. Alterations. Subject to the provisions of the Capital Program, Tenant shall have the right, from time to time after the completion of the initial component, stage, or phase of the Capital Program and at Tenant's sole cost and expense, to make additions, alterations, and changes, structural or otherwise (any addition, alteration or change involving an estimated cost up to but not exceeding \$50,000 being called an

“Alteration” and any addition, alteration, or change involving an estimated cost of more than \$50,000 being hereinafter called a **“Substantial Alteration”**) in or to the Premises, provided no Event of Default shall be continuing, subject, however, in all cases to the following:

(a) No Substantial Alteration shall be commenced except after twenty days prior written notice to **both** DCAM **and** DEM, which notice shall include the plans and other information and documentation requiring Tenant’s approval pursuant to this §8.4.

(b) No Alteration or Substantial Alteration shall be made which would tend (i) to change the general design, use, character, or structure of the Building, (ii) to decrease the size of the Building, or (iii) to reduce or impair, to any material extent, the fair-market value of the Premises (the **“Alteration Standard”**).

(c) No Alteration or Substantial Alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be properly and lawfully required from time to time, all permits and authorizations from all Governmental Authority. DCAM and/or DEM (as may be required by the Governmental Authority) shall join, but without expense to Landlord, in the application for such permits or authorizations whenever such action is necessary.

(d) Any Substantial Alteration shall be conducted under the supervision of an architect or engineer selected by Tenant and approved in writing by **both** DCAM **and** DEM, which approval shall not be unreasonably withheld, conditioned, or delayed, and no such Substantial Alteration shall be made, except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such architect or engineer and approved in writing by **both** DCAM **and** DEM, which approval shall not be unreasonably withheld, conditioned, or delayed.

(e) Any Alterations or Substantial Alterations shall be made with reasonable dispatch (Force Majeure Events excepted), in a good and workmanlike manner, in compliance with all properly and lawfully applicable permits and authorizations, buildings and zoning laws, and all other Legal Requirements of the Governmental Authority.

(f) At or before completion of any Alteration or Substantial Alteration, Tenant shall provide DCAM and DEM with complete copies of all plans and specifications therefor that were not previously provided.

(g) Any matter requiring DCAM’s and/or DEM’s consent or approval under this §8.4 shall be deemed **denied** if **either** DCAM **or** DEM fail to respond in writing within twenty days after Tenant’s request for DCAM’s and DEM’s consent or approval.

8.5. Utilities. Tenant shall make all arrangements for and pay directly to the party providing the service, before delinquent, all charges for all utilities and services furnished to or used by Tenant, including, without limitation, gas, electricity, water, steam, telephone service, trash collection, and connection charges. The telephone number that is assigned to the ice-rink operations at the Premises at of the Commencement Date shall be used by Tenant throughout the Term for Tenant’s operations at the

Premises, and said telephone number shall remain assigned to the ice-rink operations at the Premises upon the expiration of the Term or earlier termination of this Lease.

8.6. Obsolete Equipment. Except as contemplated by articles 9, 13, or 14, and subject to §5.8, Tenant shall not do, permit, or suffer any waste, damage, disfigurement, or injury to or upon the Premises or any part of the Premises. Except as contemplated by article 9, Tenant shall have the right, at any time and from time-to-time, to sell or dispose of any Building Equipment that may have become obsolete or unfit for use or that is no longer useful, necessary, or profitable in the conduct of Tenant's business, provided, that except as contemplated by article 9, Tenant shall substitute, for the disposed Building Equipment, other Building Equipment of an utility and a value at least equal to that of the property so disposed.

8.7. Compliance With Laws. During the Term, Tenant shall diligently comply with and execute, at Tenant's expense, all Legal Requirements of the Governmental Authority, of the National Board of Fire Underwriters or other body having similar functions, or of any other insurance company having policies outstanding with respect to the Premises, whether or not such Legal Requirements require the making of structural alterations, the intent of the parties being that Tenant shall discharge and perform all obligations of Landlord and Tenant that arise as aforesaid, and save Landlord blameless and harmless therefrom so that at all times the rental of the Premises shall be net to Landlord without deduction or expenses on account of any Legal Requirements.

8.8. Ice-Resurfacing Machine and Edger. Subject to availability, DEM shall provide one ice-resurfacing machine and edger equipped with a board-brush for use at the Premises by Tenant. Qualified mechanics and technicians shall perform all repairs on such equipment. Tenant shall be responsible for all costs associated with maintenance of such equipment and said repairs. If such equipment provided by DEM cannot be repaired, or if the Capital Program requires the replacement of such equipment not later than an ascertainable date, whichever occurs first, such equipment that was originally provided by DEM shall be replaced, by Tenant and at Tenant's expense, with a non-fossil-fuel-consuming ice-resurfacing machine and edger. Any ice-resurfacing machine and edger that Tenant provides for the Premises, whether as replacement equipment or otherwise, shall be a non-fossil-fuel-consuming ice-resurfacing machine and edger and shall remain the property of Landlord after the Termination Date.

8.9. Inventory and Description of Condition. A description of the condition of the Premises, and an inventory and description of the condition of all furnishings, fixtures, and equipment at the Premises, shall be developed, and reviewed and updated at least annually. Lost and irreparably damaged items shall be replaced by Tenant at Tenant's cost. Tenant shall execute a statement that acknowledges the condition of the Premises, and that acknowledges the inventory and description of all furnishings, fixtures, and equipment, as of the Commencement Date, and Tenant shall execute a statement that acknowledges the condition of the Premises, and that acknowledges the inventory and description of all furnishings, fixtures, and equipment, as of the date of each updated description of condition and each inventory that is required by this Lease.

9. CAPITAL PROGRAM

9.1. General Description. Tenant shall timely perform and timely complete the Capital Program that is set forth in *Exhibit G*. The Capital Program sets forth a program of building, grounds, and equipment development, redevelopment, remediation, upgrading, replacement, refurbishment, maintenance, and repair for the life of the Term.

9.2. Approval of Plans. Before beginning each component, stage, or phase of the Capital Program, Tenant shall provide plans and specifications (the “*Plans and Specifications*”) for such component, stage, or phase to **both DCAM and DEM** for review and approval, not to be unreasonably withheld, conditioned, or delayed. DCAM and DEM shall have forty-five days to respond to Tenant regarding the initial submission of the Plans and Specifications, and fifteen days to respond to any submissions thereafter; if **either DCAM or DEM** do not respond within the response time that is provided, Landlord shall be deemed to have denied approval thereof. If any Plans and Specifications that are submitted by Tenant to DCAM and DEM are not approved by

either DCAM or DEM within the response time that is provided, then, as soon thereafter as shall be practicable, representatives of DCAM, DEM, and Tenant, each of whom shall be duly authorized to make binding decisions, regarding such Plans and Specifications, on behalf DCAM, DEM, or Tenant, as the case may be, shall confer and definitively determine the action, if any, that Tenant must take in order to obtain Landlord’s approval, and the timeframe within which such action, if any, shall be taken. After approval of the final Plans and Specifications by **both DCAM and DEM**, Tenant shall have the right to make change orders costing less than \$20,000 in any instance or \$50,000 in the aggregate without **both DCAM’s and DEM’s** approval, and other changes with **both DCAM’s and DEM’s** approval, not to be unreasonably withheld, conditioned, or delayed. Before undertaking any construction, Tenant shall submit to **both DCAM and DEM** for **both DCAM’s and DEM’s** approval, not to be unreasonably withheld, conditioned, or delayed, a site plan (the “*Site Plan*”) showing the location of each element of such component, stage, or phase of the Capital Program, parking areas, and all other structures and means of access and egress on the Land. Tenant shall submit to **both DCAM and DEM** the written approval of the Permitted Mortgagee of the Plans and Specifications and all amendments to the Plans and Specifications where such Permitted Mortgagee requires such approval. Within 30 days after the completion date of each component, stage, or phase of the Capital Program, Tenant shall deliver to **both DCAM and DEM** true copies, **in duplicate**, of the as-built Plans and Specifications for such component, stage, or phase, including all amendments to the Plans and Specifications. The approval by the Permitted Mortgagee of the Plans and Specifications, or any other action taken by the Permitted Mortgagee with respect to the Plans and Specifications under the provisions of this Lease, shall not constitute an opinion or representation by the Permitted Mortgagee as to the sufficiency of the Plans and Specifications, or impose any present or future liability or responsibility upon the Permitted Mortgagee.

9.3. Governmental Approval. Tenant shall procure the approval of the Plans and Specifications by the Governmental Authority. DEM and DCAM, without expense to Landlord, shall cooperate with Tenant in procuring such approval. If any changes in the Plans and Specifications are required by the Governmental Authority, then Tenant, to the extent the same is required by the Permitted Mortgagee financing the Capital Program, shall procure such Permitted Mortgagee’s approval and submit such changes, if any, to **both DCAM and DEM** for their respective information but not approval.

9.4. Construction Contracts. Upon *either* DCAM's *or* DEM's request, Tenant shall deliver to *both* DCAM *and* DEM photocopies of Tenant's contracts with the architect(s) who designed any component, stage, or phase of the Capital Program and is (are) supervising construction of the such component, stage, or phase, and photocopies of Tenant's contracts with the contracting company that will constructing the such component, stage, or phase.

9.5. Prior Submissions. Tenant shall also deliver to *both* DCAM *and* DEM, before beginning construction of any component, stage, or phase of the Capital Program, copies of all financing commitments made to Tenant with respect to the construction of the of such component, stage, or phase.

9.6. Construction Commences Promptly. Construction of the each component, stage, or phase of the Capital Program shall commence promptly following the Construction Commencement Date for that component, stage, or phase, and shall proceed diligently and continuously thereafter until completion.

9.7. Completion Requirements. Tenant shall construct each component, stage, or phase of the Capital Program in a good, careful, proper, and workmanlike manner in accordance with the Plans and Specifications for such state or phase, with normal on-site changes, and with all Legal Requirements. When completed, the each component, stage, or phase of Capital Program shall comply with all Legal Requirements, and upon such completion and if appropriate for such component, stage, or phase, Tenant shall obtain and deliver to *both* DCAM *and* DEM a photocopy of each temporary certificate of occupancy and of the final certificate of occupancy before such the resulting improvements shall be occupied or operated by Tenant, except that if a temporary certificate of occupancy shall be issued, Tenant may occupy the such resulting improvements under the provisions of such certificate and, except further, that if a certificate for any part of such component, stage, or phase of the Capital Program shall be issued, Tenant may occupy the part so certified under the provisions of such certificate.

9.8. Construction Insurance. During the course of construction of each component, stage, or phase of the Capital Program, Tenant shall carry or cause to be carried adequate workers' compensation insurance and such other insurance as may be required by law to be carried by Landlord, Tenant, or either of them in connection with such construction. Such insurance shall be in addition to, rather than a duplication of, the insurance coverage required to be carried pursuant to the provisions of article 5.

9.9. Construction Performance Bond. During the course of construction of each component, stage, or phase of the Capital Program, Tenant shall provide or cause to be provided a construction performance bond in such amount as shall ensure the completion of such component, stage, or phase. Each such construction performance bond shall be issued by a surety licensed to do business in Massachusetts and shall be in addition to, rather than a duplication of, the bond required to be provided pursuant to the provisions of subsection 17.2 (i). Each such construction performance bond shall remain in effect until 30 days after the completion of all punchlist items for such component, stage, or phase. Each such construction performance bond shall state that it is for the benefit of Landlord.

10. MECHANIC'S LIENS.

10.1. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's, or materialman's lien upon the Premises or any part Premises or the income therefrom, and Tenant shall not suffer any other matter or thing arising out of Tenant's use and occupancy of Premises that might impair the estate, rights, and interests of Landlord in the Premises or any part of the Premises, except in accordance with and subject to the provisions of this Lease, including without limitation, article 15.

10.2. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part Premises, Tenant, within ten days after notice to Tenant of the

filing of such lien, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of a court of competent jurisdiction, or otherwise, provided that any such bond shall be issued by a surety licensed to do business in Massachusetts. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, DEM, on behalf of Landlord, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding. Any amount so paid by DEM and costs and expenses reasonably incurred by Landlord (including DEM) in connection therewith, together with interest thereon at the Default Rate from the respective dates of DEM's making of the payment of the cost and expenses, shall constitute Additional Rent payable by Tenant and shall be paid by Tenant to DEM within ten days of DEM's invoice therefor.

11. LANDLORD'S RIGHT TO ENTER AND INSPECT.

11.1. Entry and Inspection. During the course of demolition of the Old Building and construction and completion of the initial component, stage, or phase of the Capital Program, Tenant shall keep, on the Premises, all plans, shop drawings, and specifications relating to such demolition and construction that Landlord (which term expressly includes *both* DCAM *and* DEM within the context of this article 11), Landlord's architects, and Landlord's engineers may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the requirements of this Lease. In addition, Landlord shall have the right to show the Premises at any time during the last twelve months of the Term to any prospective lessees of the Premises, all without hindrance or molestation from Tenant. In addition, Landlord shall have the right to show the Premises at any time during the Term to any prospective purchasers or mortgagees of the Premises, and may enter upon the Premises, or any part of the Premises, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant. Landlord also shall have the right to enter upon the Premises for the purpose of exercising Landlord's rights under §7.1. Landlord also shall have the right to enter the Premises for the purpose of ascertaining the condition of the Premises and/or whether Tenant is observing and performing the obligations assumed by Tenant under this Lease, and DEM shall maintain a set of keys, provided by Tenant, for this purpose. The above-mentioned rights of entry shall be exercisable only at reasonable times, at reasonable hours, and on advance notice of not less than twenty-four hours, which may be given by telephone or by fax to the on-duty (i.e., at the time such notice is given) manager of the skating rink

that is located on the Premises, provided, however, that the right of entry for the purpose of ascertaining the condition of the Premises and/or whether Tenant is observing and performing the obligations assumed by Tenant under this Lease may be exercised at any time and without notice. Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

11.2 Limitation of Liability. Landlord may, during the progress of any work performed by Landlord pursuant to article 7 or §11.1, keep and store upon the Premises all necessary materials, tools, supplies, and equipment, *provided* that Landlord shall use reasonable efforts to minimize the impact of such work, keeping, and storing on the normal operation of the Premises. Landlord shall not be liable for, and the obligations of Tenant under this Lease shall not be affected by,

inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant or any subtenant that is reasonably and necessarily required by the making of such repairs or the performance of any such work, or on account of bringing materials, tools, supplies, and equipment into or through the Premises during the course of making such repairs or performing such work.

12. INDEMNIFICATION.

12.1 Indemnification of Landlord. Tenant shall indemnify and save harmless Landlord (which term expressly includes *both* DCAM *and* DEM within the context of this article 12) against and from all liabilities, damages, penalties, costs, and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against Landlord by reason of any of the following occurrences during the Term:

(a) any work or thing done in, on, or about the Premises or any part of the Premises by Tenant or any party other than Landlord or Landlord's agents, contractors, servants, employees, or invitees;

(b) any use, non-use, possession, occupation, condition, operation, maintenance, or management of the Premises or any part of the Premises by anyone other than Landlord or Landlord's agents, contractors, servants, employees, or invitees;

(c) any negligence on the part of Tenant or any of Tenant's agents, contractors, servants, employees, subtenants, licensees, or invitees in, on, or about the Premises; or

(d) any accident, injury, or damage to any person or property occurring in, on, or about the Premises or any part of the Premises, except to the extent caused by Landlord or by any of Landlord's agents, contractors, servants, employees, or invitees.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, defend such action or proceeding under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3.

13. DAMAGE OR DESTRUCTION.

13.1. Tenant Repair and Restoration. If, at any time during the term, the Premises or any part of the Premises shall be damaged or destroyed by fire or other occurrence (including any occurrence for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at Tenant's sole cost and expense, and whether or not the Insurance Proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and for Force Majeure Events) to repair, replace, or restore the Premises as nearly as possible to the Premises' value, condition, and character immediately before such damage or destruction (including temporary repairs and work necessary to protect the Premises from further damage), subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of §8.4. Such repair or replacement, including such changes and alterations as aforementioned and including temporary repairs, are referred to in this article 13 as the "**Work**."

13.2. Conditions of Work. Except as otherwise provided in this article 13, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of §8.4. The cost of the Work shall include the reasonable fees of an architect, if any, employed by Landlord for the purpose of examining and passing upon the Plans and Specifications, and seeing that the Work conforms therewith, subject to the limitations on the scope of DCAM's and DEM's review under §8.4.

13.3. Payment of Insurance Proceeds.

13.3.1. Cost of Work. All insurance money paid to DEM (acting on behalf of Landlord) on account of such damage or destruction under the policies of insurance provided for in article 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection of such insurance money (the "**Insurance Proceeds**"), shall be applied by DEM, on behalf of Landlord, to the payment of the cost of the Work to the extent such Insurance Proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. DEM, on behalf of Landlord, shall make such payments or disbursement upon the written request by Tenant when accompanied by the following:

- (a) a certificate dated not more than fifteen days prior to such request, signed by an authorized signatory of Tenant and by an architect in charge of the Work who shall be selected by Tenant and approved in writing by **both DCAM and DEM**, setting forth that:
 - (i) the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials, and of the several amounts so paid or due, and stating that no part of such sum has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate, (ii) except for the amount stated in such certificate to be due as aforesaid, there is no outstanding

indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialman's, or similar lien upon such Work, the Premises, Tenant's leasehold interest, or any part of any of them, and (iii) the cost, as estimated by the persons signing such certificate, of the Work required to be done after the date of such certificate in order to complete the same, does not exceed the amount of insurance proceeds remaining in the hands of DEM, on behalf of Landlord, after the payment of the sum so requested; and

(b) a certificate dated not more than fifteen days prior to such request, of the title insurance company that issued the Mortgagee policy to the first Permitted Mortgagee, covering the period from the date of this Lease (or the date of the last such certificate furnished pursuant to any of the applicable provisions of this Lease)

to the date of such certificate, setting forth that there are no liens, or encumbrances of record of any kind on the Premises except those permitted by the terms of this Lease and except such as shall be discharged by payment of the amount then requested.

13.3.2. Payments to Tenant. Upon compliance with the foregoing provisions of §13.3.1, DEM, on behalf of Landlord, out of the Insurance Proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. All sums so paid to Tenant and any other Insurance Proceeds received or collected by or for the account of Tenant (other than by way of reimbursement to Tenant for sums previously paid by Tenant) shall be held by Tenant in trust for the purpose of paying the cost of such work. Upon receipt by *both* DCAM *and* DEM of evidence satisfactory to it of the character required by §13.3.1 that the Work has been completed and paid for in full and that there are no liens of the character referred to therein, and if no Event of Default exists, DEM, on behalf of Landlord, shall, subject to the rights of any Permitted Mortgagee, pay to Tenant any remaining balance of the Insurance Proceeds.

13.3.3. Insufficiency of Proceeds. If the Insurance Proceeds received by DEM, on behalf of Landlord, shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency after the disbursement of the insurance proceeds held by DEM, on behalf of Landlord.

13.4. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred eighty days, or such longer period as may be reasonably required to adjust the insurance, achieve final plans and obtain all necessary permits, after the damage or destruction, or if such Work after commencement shall not proceed with due diligence (any Force Majeure Event excepted), Landlord may terminate this Lease pursuant to article 16. On such termination, and subject to the rights of any Permitted Mortgagee as set forth in this Lease, the Insurance Proceeds received by DEM, on behalf of Landlord, shall be retained by DEM, on behalf of Landlord, to the extent necessary to demolish any existing structures on the Premises, with any remainder to be forwarded to Tenant.

13.5. Cure by Mortgagee. If a Permitted Mortgagee, promptly after receiving from Landlord notice of any default by Tenant under §13.4, shall commence and diligently prosecute efforts, directly or through a receiver, to take possession of the Premises and to continue the Work, then DEM, on behalf of Landlord, shall pay over to such Permitted Mortgagee or the receiver, as the case may be, the proceeds of insurance pursuant to §13.3 upon receipt from such Permitted Mortgagee or such receiver of the certificates of the character required from Tenant under §13.3, and Landlord shall have no further rights on account of such default.

13.6. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction of the Premises; nor shall such damage or destruction release Tenant from any other obligations imposed upon Tenant under this Lease. At any time after the first day of the twenty-second year of this Lease, if the Building is completely or substantially damaged, Tenant shall have the option to terminate the Lease.

14. CONDEMNATION.

14.1. Total or Partial Taking; Termination of Lease. If, during the Term, there is any taking of all or any part of the Premises or any interest in this Lease by Condemnation, the rights and obligations of Landlord and Tenant shall be as follows:

14.1.1. Total Taking. If title to the whole or substantially all of the Premises shall be taken by Condemnation, this Lease shall terminate and expire on the date of such taking, and the Additional Rent shall be apportioned and paid to the date of such Condemnation.

14.1.2. Partial Taking. If title to less than the whole or substantially all of the Premises shall be taken by Condemnation, and either the portion of the Premises remaining cannot be so repaired or reconstructed with the amount of the Award available therefor so as to constitute a complete architectural unit of substantially the same economic value and usefulness as immediately before Condemnation, Tenant, at Tenant's option, may terminate this Lease within ninety days after such taking by serving upon *both* DCAM *and* DEM, at any time within said ninety-day period, a thirty-day written notice of Tenant's election to so terminate accompanied by a certificate of Tenant showing, in detail, that the remaining portion of the Premises are insufficient to permit the repair or restoration of the existing Building so as to constitute a complete architectural unit of substantially the same usefulness as immediately before such Condemnation.

14.1.3. Distribution of Award. In the event of a Condemnation and the termination of this Lease, the Award shall be distributed according to the following priority:

- (a) First, to the Permitted Mortgagee in the amount of the Permitted Mortgagee's leasehold mortgage;
- (b) Second, to Landlord and Tenant in the respective proportions that the value of Landlord's reversionary interest in the Land and the value of Tenant's leasehold

estate under this Lease bear to the total of the two, until an amount equal to the value of Tenant's leasehold estate less the amount distributed to Tenant's Permitted Mortgagee under clause (a) above has been distributed to Tenant, provide that the amount of the Award shall be adequate and sufficient for such distribution; and

(c) the balance (if any) of the Award to Landlord.

14.1.4. Landlord as Condemnor. Notwithstanding the foregoing, in the event of any such condemnation in which the Condemnor is Landlord and the entire Award is based solely on the value of Tenant's leasehold estate, the entire Award shall be distributed:

(a) First, to the Permitted Mortgagee (if any) in the amount of the Permitted Mortgagee's leasehold mortgage, and

(b) the balance of the Award, to Tenant.

14.1.5. Condition for Payment to Tenant. Any payments to be made to Tenant under the provisions of this §14.1.5 are subject to the condition that Tenant shall not be in default beyond the expiration of applicable notice and cure periods, in any of the terms, covenants, and conditions of this Lease on the Termination Date, and if any such default should then exist, the amount of said payments shall be reduced by such amount as may be reasonably required to remedy any such default.

14.2 Partial Taking - Lease Continues. In the event of a Condemnation which does not result in a termination of this Lease pursuant to §14.1, the Term shall not be reduced or affected in any way.

14.2.1 Minor Award. If the Award shall be in an amount of \$50,000 or less, the Award shall be paid to Tenant for application by Tenant to the restoration and repair of the Building. If the Award shall be in an amount in excess of \$50,000, the Award shall be paid to Landlord. If Landlord shall receive the Award, Landlord shall, upon request of Tenant, deliver to Tenant a certificate stating that the Award has been deposited with Landlord pursuant to the requirements of this Lease.

14.2.2 Restoration of Premises. Tenant, at Tenant's sole cost and expense, but only to the extent of the Award available for the purpose, shall proceed with reasonable diligence to repair and restore the remaining part of the Premises to substantially their former condition, so as to constitute a complete, architectural unit of substantially the same usefulness as immediately before the Condemnation. (Such repairs or restoration including any changes and alterations and including temporary repairs are referred to in this §14.2.2 as the "**Work**").

14.2.3. Conditions of the Work. The conditions under which the Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of §8.4, except, to the extent compliance therewith is not reasonably possible; and

the cost of the Work shall include the reasonable fees of an architect, if any, employed by Landlord for the purpose of examining and passing upon the plans and seeing that the Work conforms therewith, subject to the limitations on the scope of DCAM's and DEM's review under §8.4.

14.2.4. Use of Award for Restoration. DEM, on behalf of Landlord, shall cause to be paid over to Tenant the Award, if any is to be paid over to Tenant, in the same manner as is provided with respect to Insurance Proceeds under the provisions of §13.3.1, and provided that upon the completion and payment of the cost of the Work, the remaining balance of the Award, whether in the hands of Tenant or Landlord, shall be paid in accordance with the provisions of §14.1.3 above.

14.3 Temporary Taking. If the whole or any part of the Premises or of Tenant's interest in this Lease shall be taken by Condemnation for a temporary use or occupancy, the Term shall not be reduced or affected in any way, and Tenant shall continue to pay in full the Additional Rent, without reduction or abatement, in the manner and at the times herein specified and, except only to the extent that Tenant is prevented from so doing pursuant to the terms of the order of the Condemnation, Tenant shall continue to perform and observe all of the other covenants and agreements of this Lease as though such Condemnation had not occurred. In the event of any such Condemnation, Tenant shall be entitled to receive the entire amount of any Award, whether such Award is paid by way of damages, rent, or otherwise, unless such period of temporary use or occupancy shall extend beyond the Termination Date of the Term, in which case such Award, after payment to Landlord therefrom of the estimated cost of restoration of the Premises to the extent that the Award is intended to compensate for damages to the Premises, shall be apportioned by Landlord and Tenant, as of the Termination Date, in the same ratio that the portion of the entire period for which such compensation is made that occurs before the Termination Date and that the portion that occurs after the Termination Date bear to such entire period, provided, however, that if the portion of the Award that is payable to Tenant is made in a lump sum, or is payable to Tenant other than in equal monthly or quarterly installments, Landlord shall have a right to collect such portion of Tenant's Award as shall be sufficient to meet:

(a) the payments due to Landlord from Tenant under the terms of this Lease during the period of such temporary use or occupancy and Tenant's obligations with respect to such payments shall abate to the extent of the receipt of such portion of the Award by Landlord; and

(b) the estimated cost of restoration of the Premises, if the Condemnation is for a period not extending beyond the Termination Date, which amount shall be made available to Tenant when and if, during the Term, Tenant shall obtain possession and shall proceed to restore the same as nearly as may be reasonably possible to the condition in which the Premises were immediately prior to such taking, with such changes and alterations as Tenant may elect to make in conformity with the provisions of §8.4.

14.4. Rights of Participation. Each party shall have the right, at the party's own expense, to appear in a Condemnation proceeding and to participate in any and all hearings and trials.

14.5. Notice of Proceeding. If Landlord or Tenant shall receive notice of any proposed or pending Condemnation affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents of such notice.

15. ASSIGNMENT, SUBLETTING, MORTGAGE.

15.1 Prior Written Consent. Tenant shall not sublet, assign, mortgage, pledge, encumber, or in any manner transfer this Lease or any part of this Lease, or the interest of Tenant in any sublease or the rentals under such sublease, without the prior written consent of Landlord (which term expressly includes *both* DCAM *and* DEM within the context of this article 15, unless otherwise indicated) in each instance, except as is permitted under the provisions of §§15.1, 15.6, 15.7, or 15.10. This covenant shall not apply to the subletting or granting of license to use space in the Premises to any of the operators set forth on *Exhibit H*, provided that Tenant agrees that Tenant shall remain fully obligated and liable under each and every provision of this Lease. Tenant also shall have the right to transfer the operating obligations of this Lease to a subsidiary or licensee/franchisee of Tenant without Landlord's consent, provided that Tenant agrees that Tenant shall remain fully obligated and liable under each and every provision of this Lease. Except for the operators set forth on the foregoing *Exhibit H* and the provisions of the immediately preceding sentence in this §15.1, Tenant may only sublet, assign, or otherwise transfer all or any of Tenant's interest in the Lease with the prior written approval of Landlord, which approval may be withheld or conditioned in the sole discretion of Landlord. With regard to the proposed subtenant, assignee, or transferee, Landlord may consider, but shall not be obligated to consider, whether the proposed subtenant, assignee, or transferee has the financial capacity, experience, and reputation necessary to perform (a) Tenant's obligations under this Lease in a manner at least equal to that of Tenant, or (b) in the case of a sublease of less than the entire Premises, the subtenant's obligations under the proposed sublease. With regard to the proposed subtenant, assignee, or transferee, Landlord also may consider, but shall not be obligated to consider, whether the brand names and concepts to be operated on the Premises by the proposed subtenant, assignee, or transferee are at least as well known, recognized, and accepted by the public in the area of Massachusetts in which the Premises are located as are the brand names and concepts operated on the Premises as of the earliest date on which the Building shall be actually used for Permitted Uses (as opposed to construction activities). If Tenant proposes any subtenant, assignee, or transferee, Landlord shall have a period of sixty days following the written request of Tenant to approve, conditionally or unconditionally, or to reject such proposed subtenant, assignee, or transferee. Tenant shall promptly submit to Landlord all information requested by Landlord to evaluate a proposed subtenant, assignee, or transferee, including evidence that said subtenant, assignee, or transferee, as the case may be, is assuming Tenant's Obligations. If Landlord grants approval of the subtenant, assignee, or transferee, Tenant agrees that Tenant shall nevertheless remain fully obligated and liable under each and every provision of this Lease. If Landlord does not respond to such written request of Tenant within sixty days

of Landlord's receipt of such written request, such approval shall be deemed to have been denied and the proposal rejected.

15.2. Rent from Assignee. If this Lease is assigned, whether or not in violation of the provisions of this article 15, DEM may and is empowered to collect rent from the assignee. In such event, DEM may apply the net amount received by DEM to the Percentage Rent and Additional Rent, and no such collection shall be deemed a waiver of the covenant herein against assignment, mortgage, encumbrance, pledge, or subletting, or an acceptance of the assignee or subtenant as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant.

15.3. No Release of Tenant. The making of any assignment without the consent of Landlord (except where such consent is not required), and the making of any mortgage, pledge, encumbrance, or subletting, in whole or in part, shall not operate to relieve Tenant from Tenant's obligations under this Lease and, notwithstanding any such assignment, mortgage, pledge, encumbrance, or subletting, except as otherwise provided in this §15.3, Tenant shall remain liable for the payment of all Percentage Rent and Additional Rent, and for the due performance of all the covenants and agreements of Tenant in this Lease to the full end of the Term, whether or not there shall have been any prior termination of this Lease by summary proceedings or otherwise.

15.4. Assignee Bound. Every assignee, whether as assignee or as successor-in-interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Percentage Rent and Additional Rent, except as otherwise expressly provided in §15.7 below, and for the full and prompt performance of all the covenants and agreements of this Lease on Tenant's part to be performed to the end of the Term, except as provided in §15.4. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect. Nothing in this §15.4 contained, however, shall be deemed to constitute, or act as, a waiver on the part of Landlord of any and all of Landlord's rights, including, but not limited to, the right to terminate this Lease in the event of a default on the part of Tenant beyond applicable notice and cure periods, as is provided for under article 16.

15.5. Consent Limited. Any consent by Landlord contained in this Lease or given after the Commencement Date to any act of subletting, assignment, mortgage, pledge, or encumbrance shall be held to apply only to the specific transaction approved by such consent.

15.6. Permitted Mortgages - Conditions. Tenant, from time to time during the Term, or a subtenant, from time to time during the term of the subtenant's sublease, may make a Permitted Mortgage to an Institutional Lender to finance and refinance the construction of any component, stage, or phase of the Capital Program or other Substantial Alterations, but no more than one such Permitted Mortgage may exist at any one time, subject to the following provisions:

(a) Each Permitted Mortgage shall cover no interests in any real property other than Tenant's or subtenant's, as the case may be, interest in the Premises and the subleases.

(b) Tenant, subtenant, or the holder of such Mortgage shall promptly deliver to Landlord, in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage and of any assignment of the Permitted Mortgage, and shall notify Landlord of the address of the Mortgagee to which notices may be sent.

(c) Each Permitted Mortgage shall contain provisions requiring the disposition and application of the Insurance Proceeds and Awards in the manner provided in this Lease.

15.7. Permitted Mortgages - Provisions. With respect to any Permitted Mortgage made in accordance with the provisions of §15.6, the following provisions shall apply:

15.7.1. Definition of Permitted Mortgagee. For the purposes of this article 15, the term "*Permitted Mortgagee*" shall mean the holder of record of a Permitted Mortgage, *provided* such holder of record shall be an Institutional Lender.

15.7.2. Permitted Mortgages Not Assignment; Purchaser at Sale Deemed Assignee or Transferee. For the purpose of this article 15 the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, and no Permitted Mortgagee, as such, shall be deemed an assignee or transferee of this Lease or of the leasehold estate created by this Lease so as to require such Permitted Mortgagee, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed under this Lease. However, the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this article 15 and shall be deemed to have assumed the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed under this Lease from and after the date of such purchase and assignment.

15.8. Notice to Mortgagees. So long as any Permitted Mortgage shall remain a lien on Tenant's leasehold estate under this Lease, Landlord (*viz.*, either DCAM or DEM, as the case may be, acting on behalf of Landlord) agrees, simultaneously with the giving of any written notice to Tenant (i) of default, or (ii) of a termination of this Lease, or (iii) of a matter on which a default may be predicated or claimed, or (iv) of a condition which if continued may lead to a termination of this Lease, to give duplicate copies of such written notice, or of any process in any action or proceeding brought to terminate this Lease, to the holder of such Permitted Mortgagee, provided the provisions of §15.6 shall be complied with,

and no such notice to Tenant or process shall be effective unless a copy of such notice is given to each Permitted Mortgagee in the manner herein provided.

15.8.1. No Cure by Mortgagee Required. Permitted Mortgagee shall not be required to cure any default, to take possession of the Premises, to perform any covenants or agreements herein, or to undertake any other obligations of the Lease upon default by Tenant or prior to or following any attempts by Tenant or Permitted Mortgagee to cure, eliminate, or remedy such default.

15.9. Mortgagee Cures. A Permitted Mortgagee shall have the same period, after receipt of the notice as provided in §15.8, for remedying the default or causing the same to be remedied as is given Tenant under article 16 after notice to Tenant *plus* ten days, and Landlord (*viz.*, either DCAM or DEM, as the case may be, acting on behalf of Landlord) agrees to accept such

performance on the part of a Permitted Mortgagee as though the same had been done or performed by Tenant. At the expiration of the period provided under the preceding sentence, Landlord shall take no action to effect a termination of this Lease by reason of any default (except a default in the payment of Percentage Rent or Additional Rent or a default under any other provision of this Lease which requires Tenant to pay money) without first giving to the Permitted Mortgagee an additional ninety days (or such longer period as may be reasonably required to accomplish the task in question *provided* Permitted Mortgagee is diligently pursuing an acquisition or foreclosure, and *provided further* that such additional period shall not extend beyond one-hundred-eighty days unless Tenant is under the protection of federal Bankruptcy law, in which case the above deadline shall be extended one day for each day that Permitted Mortgagee is unable to exercise Permitted Mortgagee's remedies due to the automatic stay or other order of the United States Bankruptcy Court) within which either (i) to obtain possession of the Premises (including possession by a receiver) and thereafter to cure such default, or (ii) to institute and complete foreclosure proceedings, and thereafter to cure such default, or (iii) otherwise to acquire Tenant's interest under this Lease with diligence and without unreasonable delay. The Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; *provided, further*, that nothing herein shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance. The provisions of this article 15 are conditioned on the following provisions:

15.9.1. Acquisition of Possession. The Permitted Mortgagee shall, within twenty days after receiving notice of such default, notify Landlord (*viz.*, ***both* DCAM *and* DEM**, acting on behalf of Landlord) of the Permitted Mortgagee's election to proceed with due diligence promptly to acquire possession of the Premises, to commence to cure such default or to foreclose the Permitted Mortgage or otherwise to extinguish Tenant's interest in this Lease.

15.9.2. Agreement of Permitted Mortgagee. Such notice from the Permitted Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Mortgagee agrees that:

(a) during the period that such Permitted Mortgagee shall be in possession, of the Premises and so long as the Permitted Mortgagee remains in possession and/or during the pendency of any such foreclosure or other proceedings, and until the interest of Tenant in this Lease shall terminate, or such proceeding shall be discontinued, such Permitted Mortgagee shall pay or cause to be paid to DEM all sums becoming due from time to time under this Lease for Percentage Rent and Additional Rent;

(b) Permitted Mortgagee shall have no liability for the payment of Percentage Rent or Additional Rent if Permitted Mortgagee shall not be in possession of the Premises; and

(c) if delivery of possession of the Premises shall be made to such Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings

or otherwise, such Permitted Mortgagee, promptly following such delivery of possession, shall perform all the covenants and agreements herein contained on Tenant's part to be performed (including, but not limited to, payment of Percentage Rent and Additional Rent) to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements that cannot, with the exercise of due diligence, be performed by such Permitted Mortgagee. Nothing in this clause (c) shall be construed to require such Permitted Mortgagee to perform any of Tenant's obligations under this Lease that accrue after such Permitted Mortgagee ceases to be in possession.

15.9.3. Delivery of Security. If the Permitted Mortgagee is not an Institutional Lender, the Permitted Mortgagee shall deliver to DEM, within such twenty-day period, security sufficient, in *both* DCAM's *and* DEM's reasonable opinion, to ensure curing of such default or defaults.

15.10. New Lease with Mortgagee. If this Lease is terminated before the last day of the Term, Landlord (*viz.*, either DCAM or DEM, as the case may be, acting on behalf of Landlord) agrees that Landlord shall give Permitted Mortgagee notice of termination and enter into a new lease of the Premises with Permitted Mortgagee, or, at the request of Permitted Mortgagee, with Permitted Mortgagee's assignee, designee, or nominee, for the remainder of the Term, effective as of the date of termination and upon the same terms as contained in this Lease, except for requirements that no longer apply or have already been performed. Notwithstanding the preceding sentence, Landlord shall not be obligated to enter into a new lease of the Premises with Permitted Mortgagee or Permitted Mortgagee's assignee, designee, or nominee unless *all* of the following events *timely occur* and *in strict accordance* with the following provisions: (i) within thirty days after the giving of notice of termination, Permitted Mortgagee makes written request upon Landlord (*viz.*, *both* DCAM *and* DEM) for the new lease, and the written request is accompanied by payment to DEM of all amounts then due to Landlord, of which DEM shall have given Permitted Mortgagee notice; (ii) Permitted Mortgagee pays or causes to be paid to DEM, at the time of execution and delivery of the new lease, any and all additional sums that, at the time of execution and delivery of the new lease, would be due under this Lease, but for such termination; and (iii) Permitted Mortgagee pays or causes to be paid to DEM, at the time of execution and delivery of the new

lease, any and all expenses, including reasonable counsel fees, that are incurred by Landlord in connection with the termination of this Lease and execution and delivery of the new lease, provided that the charges to Permitted Mortgagee with respect to such expenses shall not exceed three thousand dollars. The provisions of this §15.10 shall survive the termination of this Lease and shall continue in full force and effect thereafter, to the same extent as if this §15.10 were a separate and independent contract among Landlord, Tenant, and Permitted Mortgagee. Landlord shall assign all remaining subleases in the Premises to the tenant under the new lease. Landlord shall have no obligation to deliver possession of the Premises as against anyone but Landlord.

15.11. Cancellation by Tenant. This Lease shall not be modified or surrendered to Landlord or cancelled by Tenant. Landlord shall not accept a surrender of this Lease without the prior written consent of each Permitted Mortgagee. No merger shall result from the acquisition by any one entity of the fee and leasehold estates in the Premises.

15.12. Transfer of Tenant Shares. Assignment or transfer of more than 49% of any class of the shares of or beneficial interest in Tenant, whether partnership, corporate, or otherwise, shall be deemed an assignment of this Lease. A transfer of shares occasioned by the death of the owner of such shares shall not be deemed an assignment of this Lease if such transfer is to a member of the Immediate Family of such owner.

15.13. Subleasehold Recognition Agreements. Landlord agrees that the subleases of the subtenants listed in *Exhibit H* and those of any other subtenants permitted under this Lease may contain leasehold-mortgagee-protective provisions in the nature of §§15.6 through 15.12, and Landlord agrees to enter into a Recognition Agreement in the form of *Exhibit I* with any such subtenant and/or lender of such subtenant who may request the same.

16. TENANT'S DEFAULTS.

16.1. Events of Default. If any one or more of the following events (herein sometimes called "*Event of Default*" or "*Events of Default*") happens or happen:

(a) if default is made in the due and punctual payment of any Percentage Rent or Additional Rent that remains uncured for fifteen days after written notice of such default by Landlord to Tenant; or

(b) if default is made by Tenant in the performance of or compliance with any of the covenants and agreements of this Lease other than those referred to in the foregoing subsection (a), and such default continues for a period of thirty days after written notice of such default from Landlord to Tenant (provided, that if Tenant, using reasonable efforts, proceeds with due diligence during such thirty-day period to cure such default and is unable, by reason of the nature of the work involved, to cure the same within the said thirty days, Tenant's time to do so shall be extended by the time reasonably necessary to cure the same); or

(c) Notwithstanding the foregoing provisions in subsection (b) or any other provision in this Lease, if Tenant does not construct, by the Outside Full Operations Date, the initial component, stage, or phase of the Capital Program that is to be completed not later than the Full Operations Date, this shall constitute an Event of Default without any requirement for notice from Landlord or an additional cure period for Tenant;

(d) if Tenant files any petition or answer seeking any reorganization, arrangement, liquidation, dissolution, or similar relief for Tenant under the United States Bankruptcy Code, as then in effect, or any other present, or future federal, state, or other statute, law, or regulation, or if Tenant seeks or consents to or acquiesce in the appointment of any trustee, receiver, or liquidator of Tenant or of all or any substantial part of Tenant's properties, or makes any general assignment for the benefit of creditors; or

(e) if a petition is filed against Tenant seeking any reorganization, arrangement, liquidation, dissolution, or similar relief under the United States Bankruptcy Code, as then in effect, or under any other present or future federal, state, or other statute, law, or regulation, and remains undismissed for ninety days, or if any trustee, receiver, or liquidator of Tenant, or of all or any substantial part of Tenant's properties, is appointed without the consent or acquiescence of Tenant, and such appointment remains unvacated or unstayed for ninety days;

then and in any such event and at any time thereafter, Landlord may give written notice to Tenant specifying such Event of Default and stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which shall be at least five days after the giving of such notice, and upon the date specified in such notice, subject to the provisions of article 15 and §16.4, this Lease shall terminate as though such date were the date originally set forth herein for the last day of the Term, but Tenant shall continue to be liable to Landlord as hereinafter provided.

16.2. Surrender and Re-entry. Upon a termination of this Lease resulting from an Event of Default, Tenant shall quit and peacefully surrender the Premises to Landlord (*viz*, to DEM). At any time upon or after any such termination, Landlord, without notice, may enter upon, re-enter, possess, and repossess the Premises by summary proceedings, ejectment, or otherwise, may dispossess and remove Tenant, and may have, hold, and enjoy the Premises and the right to receive all income of and from the same.

16.3. Right to Relet. Landlord shall use reasonable efforts to relet all or any part of the Premises, in the name of Landlord, for such term or terms (which may be greater or less than the period that would otherwise have constituted the balance of the Term) and on such conditions as Landlord, in Landlord's reasonable discretion, may determine, and DEM, on behalf of Landlord, may collect and receive the rents therefor. In no way shall Landlord be responsible or liable for any failure to relet the Premises or any part of the Premises, or for any failure to collect any rent due upon any such reletting, provided that Landlord has used reasonable efforts to do so.

16.4. Tenant Liability Continues. No termination of this Lease resulting from an Event of Default shall relieve Tenant of Tenant's liability and obligations under this Lease, and such liability and obligations shall survive any such termination. In the event of any such termination, whether or not the Premises or any part of the Premises shall have been relet, Tenant shall pay to DEM, on behalf of Landlord, the Percentage Rent and the Additional Rent required to be paid by Tenant up to the Termination Date, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination, shall be liable to Landlord for, and shall pay to DEM, on behalf of Landlord, for Tenant's default, the difference between:

(a) the equivalent of the amount of the Percentage Rent and Additional Rent that would be payable under this Lease by Tenant if this Lease were still in effect, less

(b) the net proceeds of any reletting effected pursuant to the provisions of §16.4 after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, alteration costs, and expenses of preparation for such reletting.

Tenant shall pay such current damages (herein called "**Deficiency**") to DEM on the days on which the Percentage Rent and the Additional Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each Deficiency as the same shall arise.

16.5. Liquidated Damages. If this Lease is terminated as provided in §16.1 above, then at any time after such termination, in addition to all sums that were due prior to the date of such termination, and whether or not DEM has received payments pursuant to §16.4, upon receipt of Landlord's notice of election to claim liquidated damages under this §16.5 (the "**Notice of Election**"), Tenant shall forthwith pay to DEM as liquidated damages, in lieu of any damages that may become due under §16.4 for the remainder of the Term after the date on which the Notice of Election is given, a sum equal to the amount by which the Termination Value of the Percentage Rent and the Additional Rent that would have been paid in accordance with this Lease for the remainder of the Term after the date of the Notice of Election exceeds the fair-market-rental-value of the Premises for the remainder of the Term, estimated as of the date of the Notice of Election as a single lump-sum for the remainder of the Term. For purposes of this section, the term "**Termination Value of the Percentage Rent and the Additional Rent**" shall mean the Percentage Rent and the Additional Rent for the remainder of the Term after the Notice of Election, discounted to the date of payment at a reasonable discount rate. If the Premises or any part of the Premises are/is relet by Landlord for more or less than the unexpired Term, before presentation of proof of such liquidated damages to any court, commission, or tribunal, the amount of rent reserved upon such reletting shall be deemed, *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

16.6. Additional Damages. If this Lease terminates as provided in §16.1, then, in addition to any other rights under this article 16, Landlord shall be entitled to recover, as damages, (i) the cost of performing any work required to be done by Tenant under this Lease and all damages resulting from

Tenant's default in performing such work, and (ii) the cost of placing the Premises in the same condition as Tenant is required to surrender the Premises under this Lease.

17. TENANT'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.

17.1. Tenant's Representations and Warranties. As of the date of this Lease, Tenant represents and warrants to Landlord as follows:

(a) Tenant's name appears in this Lease exactly as Tenant's name appears on Tenant's organizational documents, as most recently amended, that are on file in the Office of the Secretary of the Commonwealth of Massachusetts.

(b) Tenant has full legal capacity to enter into this Lease.

(c) Tenant is validly organized and existing, Tenant is in good standing in the state, commonwealth, territory, or jurisdiction of Tenant's organization, and Tenant is authorized and qualified to do business in the Commonwealth of Massachusetts.

(d) The execution and delivery of this Lease has been duly authorized, and each person executing this Lease on behalf of Tenant has full authority to do so and to fully bind Tenant.

(e) Tenant is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

(f) Tenant knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Tenant or Tenant's properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Lease, or Tenant's ability to carry out Tenant's obligations under this Lease.

17.2. Tenant's Covenants. Tenant covenants with Landlord as follows:

(a) Tenant shall be responsible for all costs related to capital improvements to the Premises, including without limitation, those costs necessary to construct the initial component, stage, or phase of the Capital Program and related improvements shown on the Plans and Specifications;

(b) All improvements, including the initial component, stage, or phase of the Capital Program, shall be constructed in compliance with the Americans with Disabilities Act and regulations of the Architectural Access Board of the Commonwealth of Massachusetts;

(c) All existing underground heating oil tanks located on the Premises shall be removed on or before the Full Operations Date. New tanks with proper spill-control mechanisms shall be installed by Tenant inside the basement of the Building; and

(d) Tenant shall provide notice to the Massachusetts Commission for the Blind if Tenant now operates or intends to introduce vending machine services to the Premises.

(e) Tenant shall comply with all laws, rules, and regulations pertaining to oil, hazardous materials, and the environment, and shall take all necessary precautions to prevent the release of any hazardous materials.

(f) Tenant shall comply with all applicable laws, rules, regulations, ordinances, orders, and requirements of the Governmental Authority relating to the delivery of the services described in this Lease. Unless otherwise provided by law, Tenant shall promptly pay all fines, penalties, and damages that may arise out of, or are imposed because of, Tenant's failure to comply with the provisions of the first sentence of this paragraph and of the remainder of this Lease. Tenant shall fully indemnify Landlord against any liability, cost, or expense that is incurred as a result of a breach of this covenant.

(g) Tenant shall comply with all applicable rules and regulations of DEM and the Governmental Authority pertaining to the health and safety of persons and property.

(h) Tenant shall comply with all applicable federal requirements of the Land and Water Conservation Fund (P.L. 88-578), specifically the Post Completion Requirements.

(i) Tenant shall post a performance bond with DEM in the amount of not less than \$50,000 and issued by a surety licensed to do business in Massachusetts. The bond shall remain in effect through the Term and until the final financial statement has been received by DEM from Tenant, and the inspection and inventory of the Premises have been completed, all to the reasonable satisfaction of DEM, but in no event shall the bond terminate sooner than 30 days after the last day of the Term or earlier termination of this Lease. For each of years 11-25 of the Term, the minimal amount of the performance bond shall be adjusted to reflect increases, but not decreases, in the Consumer Price Index. Each performance bond shall state that it is for the benefit of Landlord. Each performance bond must remain in full force and effect until it is superseded by another bond or, in the case of a performance bond in effect at the time of the expiration or earlier termination of the Term, such bond must remain in full force and effect until thirty days after DEM has received Tenant's final financial statement required pursuant to this Lease.

18. LANDLORD'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.

18.1. Landlord's Representations, Warranties, and Covenants. Landlord represents and warrants to, and covenants with, Tenant that:

(a) On the Commencement Date, the Premises shall be vacant, except for any equipment and personnel of the entity that are controlled by the principals of Tenant who are operating the Premises immediately before the Commencement Date, if any, and no third party shall have any tenancy or license to use all or any portion of the Premises during the Term;

(b) Landlord has not received any requests to approve a taking of all or any portion of the Premises by eminent domain; and

(c) This Lease is enforceable in accordance with the Lease's terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application that affect the rights of creditors, or by the discretionary nature of equitable remedies, including specific performance.

19. NO WAIVERS.

19.1. No Implied Waivers; Remedies Cumulative. No covenant or agreement in this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver is in writing and signed by the party against whom it is to be enforced or by such party's agent. Consent or approval of Landlord or Tenant to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not

relieve the other party from the obligation, wherever required under this Lease, to obtain consent or approval for any other act or matter. Landlord or Tenant may restrain any breach or threatened breach of any covenant or agreement in this Lease, but the mention in this Lease of any particular remedy shall not preclude either Landlord or Tenant from any other remedy that Landlord or Tenant might have, either at law or in equity. The failure of Landlord or Tenant to insist upon the strict performance of any one of the covenants or agreements of this Lease, or to exercise any right, remedy, or election contained in this Lease or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy, or election, but the same shall continue and remain in full force and effect. Any right or remedy of Landlord or Tenant specified in this Lease, or any other right or remedy that Landlord or Tenant may have at law, in equity, or otherwise upon breach of any covenant or agreement contained in this Lease shall be a distinct, separate, and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

19.2. Acceptance of Rent Not a Waiver. Receipt or acceptance of rent by DEM shall not be deemed to be a waiver of any default under the covenants or agreements of this Lease, or of any right that Landlord may be entitled to exercise under this Lease. If Tenant is in arrears in the payment of Percentage Rent, or Additional Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payment shall be credited. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction, and DEM may accept such check or payment without prejudice to

Landlord's right to recover the balance of such rent or pursue any other remedy that is provided by this Lease.

20. HAZARDOUS MATERIALS.

20.1. Provisions Concerning Existing Contamination.

20.1.1. Contamination, Environmental Report, RIP, Response Actions, MCP, and Clean-up. If Hazardous Materials are present on, at, and under the Land as of the Commencement Date (the "**Contamination**"), the Contamination is disclosed in a document that is attached as **Exhibit J** (the "**Environmental Report**"), and a document that is attached as **Exhibit K** (the "**RIP**") sets forth further response actions ("**Response Actions**"), as that term is defined in the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. ("**MCP**"), that are required with respect to the Contamination (the "**Clean-up**").

If the Environmental Report and the RIP are not so attached, but, rather, **Exhibit J** and **Exhibit K** each contains a declaration that it is "INTENTIONALLY OMITTED," the remainder of this subsection 20.1.1 is inapplicable to this Lease.

If the Environmental Report and the RIP are so attached, the remainder of this subsection 20.1.1 is applicable to this Lease.

Landlord and Tenant acknowledge and agree that the Contamination occurred before the Commencement Date and that the Contamination was caused by a "release," as that term is defined in Chapter 21E ("**Release**"), of Hazardous Materials by a party or parties other than Tenant or entities controlled by, or principals of, Tenant.

Tenant shall comply with all applicable laws, shall implement the Response Actions alternative identified in the RIP, and shall diligently and in good faith strive to achieve a Condition of No Significant Risk, as that term is defined in the MCP, and. Tenant shall file with DEP a Response Action Outcome Statement. Tenant shall undertake Response Actions in compliance with all applicable Legal Requirements and in compliance with a written plan for the Clean-up which has been or shall be prepared by DCAM and/or by DEM. Before Tenant undertakes Response Actions, DCAM, DEM, and Tenant shall mutually agree, in writing, to the reasonable costs of the Response Actions and of the Clean-up, and such mutually agreed reasonable costs shall be an integral part of said plan. Tenant shall have all required access to the Land in order to perform the Response Actions. Tenant shall have complete and exclusive control over the execution of the Clean-up (subject to DCAM's **and** DEM's prior written approval of any modifications to the plan for the Clean-up, which approval shall not be unreasonably withheld, conditioned, or delayed), except that **both** DCAM **and** DEM must review and comment on the

content of all submittals, as well as make all submittals, under DCAM letterhead, to the Department of Environmental Protection in connection with the Clean-up that is subject to any Administrative Consent Order between DEM and/or DCAM and the Department of Environmental Protection. In addition, Tenant may not establish any Activity and Use Limitation(s), as that term is defined in the MCP, without the prior written approval of **both** DCAM **and** DEM, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant shall have the right to incorporate monitoring wells and/or any part of the ground water remediation system established on the Land into the Building in a manner reasonably acceptable to **both** DCAM **and** DEM. Notwithstanding the foregoing, **both** DCAM **and** DEM shall have the right to review and inspect any and all work performed in connection with the Clean-up and to receive monthly progress reports from Tenant or Tenant's consultants as to the progress of the Clean-up. If Tenant fails to comply with an applicable deadline set forth in the MCP, unless the deadline has been extended by DCAM, DEM, **and** the Department of Environmental Protection, DCAM and/or DEM shall have the right, but not the obligation, to undertake the balance of the Clean-up in accordance with, and subject to the provisions of, article 7.

Subject to the provisions of subsections 20.1.3 and 20.1.4, Tenant shall pay all costs necessary to execute the Clean-up and the Additional Contamination Clean-up (defined in subsection 20.1.2). All amounts paid by Tenant or on Tenant's behalf in executing the Clean-up, the Additional Contamination Clean-up, and/or the Response Actions are referred to herein as "**Cleanup Costs**," provided, however, that Tenant's attorneys' fees in

connection with the Contamination, the Clean-up, the Additional Contamination, and the Additional Contamination Clean-up, whether billed directly to Tenant, incurred by Tenant as an in-house expense, or billed to any of Tenant's consultants, contractors, or subcontractors, and passed on or passed through to Tenant by Tenant's consultants, contractors, or subcontractors, shall in no event whatsoever be considered an Approved Clean-up Cost (defined in subsection 20.1.3).

20.1.2. Additional Contamination Clean-Up. If it is discovered that there has been a Release of Hazardous Materials other than the Contamination on, at, under, or from the Premises prior to the Commencement Date (the "**Additional Contamination**") and the Additional Contamination requires Response Action(s) (the "**Additional Contamination Clean-up**"), Tenant shall undertake the Additional Contamination Clean-up in compliance with all applicable Legal Requirements and in compliance with a written plan for the Additional Contamination Clean-up that has been prepared by Tenant and mutually agreed upon by DCAM, DEM, **and** Tenant. Said mutually agreed-upon plan shall include the reasonable costs of the Additional Contamination Clean-up as an integral part of said plan. Tenant shall have complete and exclusive control over the execution of the Additional Contamination Clean-up (subject to **both** DCAM's **and** DEM's prior written approval of any modifications to the plan for the Additional Contamination Clean-up, which approval shall not be unreasonably withheld, conditioned, or delayed) including the right to prepare, execute, enter into, deliver, file, and/or record such instruments as Tenant may deem appropriate, except that Tenant may not establish any Activity and Use Limitation(s), as that term is defined in the MCP, without the prior written approval of **both** DCAM **and** DEM, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the

foregoing, **both DCAM and DEM** shall have an opportunity to review and inspect any and all work performed in connection with the Additional Contamination Clean-up and to receive monthly progress reports from Tenant or Tenant's consultants as to the progress of the Additional Contamination Clean-up. If Tenant fails to comply with an applicable deadline set forth in the MCP, unless the deadline has been extended by the Department of Environmental Protection, DCAM and/or DEM shall have the right, but not the obligation, to undertake the balance of the Additional Contamination Clean-up in accordance with, and subject to the provisions of, article 7.

As set forth in subsection 20.1.1, but subject to the provisions of subsections 20.1.3 and 20.1.4, Tenant shall pay all costs necessary to execute the Clean-up, the Additional Contamination Clean-up, and/or the Response Actions. All amounts paid by Tenant or on Tenant's behalf in executing the Clean-up, the Additional Contamination Clean-up, and/or the Response Actions are referred to herein as "**Cleanup Costs**."

20.1.3. Reimbursement Obligation of DEM. Notwithstanding the prohibition against set-off of rent set forth in §4.2, following the Commencement Date, Tenant may set-off, against the Percentage Rent, the Approved Clean-up Costs (as defined below) in accordance with and subject to the following terms and conditions:

(a) Tenant may establish Clean-up Costs as "**Approved Clean-up Costs**" for the purposes of this Lease in accordance with the following procedure: Tenant may deliver to **both DCAM and DEM**, at any time and from time to time, written notice ("**Clean-up Cost Notice**") of the amount of Clean-up Costs paid by Tenant from time to time that Tenant desires to establish as Approved Clean-up Costs. Tenant agrees that the only Clean-up Costs eligible for classification as Approved Clean-up Costs are payments to environmental consultants and their or Tenant's contractors and subcontractors for assessment, investigation, and remediation of the environmental condition of the Premises since the Conditional Designation, including, without limitation, preparation of all reports and filings, and the actual hard costs of the Clean-up, the Additional Contamination Clean-up, and/or Response Actions, including, without limitation, ongoing monitoring, sampling, field screening, laboratory analysis, contaminated soil and/or ground water treatment, storage and off-site disposal or reuse/recycling, filing fees, fees required under the MCP, DEP oversight and/or compliance-assurance fees, and other permitting costs, payments to such consultants, contractors, and subcontractors for the oversight of such remediation, and ongoing monitoring and reports generated in connection therewith, as well as the monthly progress reports required under §20.1.2, and costs of the insurance required under §5.7, but excluding Tenant's attorneys' fees, as provided in last paragraph of §20.1.1, and also excluding any fines or penalties that may be incurred or imposed with regard to the performance (or deficiency of performance) of Tenant and/or of Tenant's employees, consultants, contractors (including their subcontractors), agents, and/or persons and entities acting on Tenant's behalf or under Tenant's control, of the Clean-up, the Additional Contamination Clean-up, Response Actions, and/or other undertakings of

Tenant pursuant to article 20. Clean-up Cost Notices shall be accompanied by reasonable supporting documentation (e.g., copies of the invoice and check) evidencing payment of the Clean-up Costs. Such supporting documentation shall be sufficiently detailed so as to enable DCAM and DEM to determine compliance with this Lease, including, without limitation, compliance with the absolute exclusion of Tenant's attorneys' fees by said last paragraph of §20.1.1, and compliance with the absolute exclusion of fines and penalties by this paragraph (a), and Tenant shall require Tenant's consultants, contractors, and subcontractors to prepare their respective invoices for Tenant accordingly. DCAM and DEM each shall have the right to disapprove all or any part of any costs set forth in any Clean-up Cost Notice, but only on the basis that such costs were not reasonably incurred by Tenant in connection with the Clean-up, the Additional Contamination Clean-up, and/or Response Actions, or do not constitute an item eligible for reimbursement, as set forth above. DCAM or DEM may exercise such right by giving Tenant written notice ("**Dispute Notice**"), within twenty business days after the date of any Clean-up Cost Notice given to DCAM and/or DEM, of the costs disputed by DCAM and/or DEM and specifying with reasonable particularity the basis of such dispute. If *either* DCAM *or* DEM fails to give a timely Dispute Notice with regard to any Clean-up Cost Notice or any costs set forth therein, all costs set forth therein shall be deemed "**Disputed Clean-Up Costs**" for the purposes of this subsection 20.1.3. If *either* DCAM *or* DEM timely gives a Dispute Notice with regard to any Clean-up Cost Notice or any costs set forth therein, all costs that are *not* disputed in any Dispute Notice shall be deemed Approved Cleanup Costs. If DCAM or DEM timely gives a Dispute Notice, and *either* DCAM *or* DEM, as the case may be (*viz*, the giver of the Dispute Notice), and Tenant are unable to resolve such dispute within thirty days after *either* DCAM's *or* DEM's Dispute Notice, *either* the party that timely gives a Dispute Notice *or* Tenant may submit such dispute to Arbitration in accordance with **Exhibit B**, and the arbitrators shall determine whether the Disputed Cleanup Costs were reasonably incurred by Tenant in connection with the Clean-up, the Additional Contamination Clean-up, and/or the Response Actions. Pending the arbitrators' decision, the Disputed Clean-up Costs shall be deemed Approved Clean-Up Costs. If any Disputed Clean-up Costs are determined by the arbitrators not to have been reasonably incurred by Tenant, as aforesaid, then (1) Tenant shall promptly reimburse DCAM and/or DEM, as the case may be, for any amount that has been actually set-off against the Percentage Rent, together with interest at Tenant's Mortgage Rate from the date of actual set-off, and (2) to the extent that such costs have not been set-off against the Percentage Rent, the amount of such costs and any interest attributable to such costs shall be excluded from Approved Clean-Up Costs.

(b) DEM shall have the right, but not the obligation, to reimburse Tenant directly for any accrued Approved Clean-up Costs.

20.1.4. Equipment, Materials, and Systems. All equipment and/or materials used in the construction, operation, and maintenance of any remediation system installed to perform the Clean-up or the Additional Contamination Clean-up shall, once Tenant is reimbursed for the costs

of the same under the provisions of §20.1.3, become the property of DEM. Before undertaking construction of any remediation system on the Premises, Tenant shall consult an inventory of remediation-systems equipment that DCAM and DEM maintain. Whenever equipment is required to perform the Clean-up or the Additional Contamination Clean-up, Tenant shall make every effort to use equipment already owned by DCAM or DEM in connection with remediation systems at other locations.

20.2. Provision of Reports and Materials To DCAM and DEM. Tenant agrees as follows:

(a) Tenant, at no cost to Landlord, shall provide DCAM and DEM with copies of all environmental reports, correspondence, studies, or other documents, except those protected by attorney-client privilege, relating to the scope of the Contamination, the Clean-up, and, if applicable, the Additional Contamination and Additional Contamination Clean-up, prepared by Tenant's environmental consultant and/or other third-party professionals employed by or at the direction of Tenant (the "*Environmental Materials*"); and

(b) At DCAM's or DEM's request, Tenant shall take such actions as are reasonably required to procure for DCAM and/or DEM, as the case may be, a letter from Tenant's environmental consultant and/or such third-party professionals to the effect that DCAM and DEM may rely upon and use the Environmental Materials as if they were originally issued to DCAM and/or to DEM.

20.3. Releases of Hazardous Materials. Tenant covenants and agrees not to release, dispose, manufacture, store, or transport any Hazardous Materials at, on, under, or from the Premises except in compliance with applicable Legal Requirements. The migration of some or all of the Contamination and/or the Additional Contamination after the Commencement Date shall not constitute a release, disposal, manufacture, storage, or transportation of Hazardous Materials by Tenant for purposes of this provision, except to the extent that the migration of some or all of the Contamination and/or the Additional Contamination is aggravated or caused by the negligence or intentional misconduct of Tenant, Tenant's environmental consultant, or other third party professionals employed by or at the direction of Tenant in the course of remediation.

20.4. Notices of Release of Hazardous Materials.

(a) Tenant shall promptly notify *both* DCAM *and* DEM in writing of all spills or releases of Hazardous Materials caused by Tenant and for which Tenant has an obligation to report under Chapter 21E and the MCP, excluding reporting arising from the Contamination, and all notices, orders, fines, or communications of any kind received by Tenant from the Governmental Authority or third party concerning the presence or suspected presence of Hazardous Materials on the Premises, the migration or suspected migration of Hazardous Materials from the Premises to other

property, or the migration or suspected migration of Hazardous Materials from other property to the Premises.

(b) DCAM or DEM, as the case may be, shall promptly notify Tenant in writing of all spills or releases of Hazardous Materials caused by DCAM or DEM, as the case may be, or for which DCAM or DEM, as the case may be, has an obligation to report under Chapter 21E and the MCP, including reporting arising from the Contamination and the Clean-up, and all notices, orders, fines, or communications of any kind received by DCAM or DEM, as the case may be, from the Governmental Authority or third party concerning the presence or suspected presence of Hazardous Materials on the Premises, the migration or suspected migration of Hazardous Materials from the Premises to other property, or the migration or suspected migration of Hazardous Materials from other property to the Premises.

20.5. DCAM's and DEM's Right to Inspect. Subject to article 11, DCAM and DEM, and their respective officers, employees, contractors, and agents, shall have the right, but not the duty, to inspect areas of the Premises to determine whether Tenant or occupants of adjacent properties are complying with CERCLA, RCRA, Chapter 21C, Chapter 21E, other environmental laws, or regulations promulgated pursuant to any of the foregoing, as amended. DCAM and DEM each shall use its best efforts to minimize interference with Tenant's business and with the businesses of other occupants of the Premises and adjacent properties, but Landlord shall not be liable for any interference caused by such inspectional activities, provided DCAM and/or DEM, as the case may be, shall have used such best efforts.

20.6. Release by Landlord for Existing Contamination.

(a) Landlord releases Tenant and Tenant's parent corporations, affiliates, subsidiaries, divisions, directors, officers, trustees, partners, employees, agents, heirs, beneficiaries, predecessors, successors, and assigns (collectively, the "***Tenant Released Party***") from, and covenants and agrees that Landlord shall not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit, or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim, or fourth-party claim) ("***Claim(s)***") against the Tenant Released Party, including, without limitation, Claims for Response Actions, response costs, assessment, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages relating to, or arising from, the Contamination, the Additional Contamination, and the migration of the Contamination or the Additional Contamination, even if such migration first begins to occur after the Commencement Date, and the Clean-up or the Additional Contamination Clean-up. Notwithstanding the foregoing, this release shall not apply to (i) Claims arising from the aggravation of the Contamination and/or the Additional Contamination due to the negligence or intentional misconduct of Tenant, Tenant's environmental consultant, or other third party professionals employed by or at the direction of Tenant in the course of remediation, or (ii) Claims arising for the breach of Tenant's obligations under article 20.

(b) The provisions of this §20.6 shall survive expiration or earlier termination of this Lease.

20.7. Release and Defense and Indemnification by Tenant.

(a) Tenant and Tenant's successors and assigns (collectively, the "***Tenant Releasing Party***") releases Landlord and Landlord's predecessors, successors, and assigns (collectively, the "***Landlord Released Party***") from, and covenants and agrees that the Tenant Releasing Party shall not assert or bring, or cause any third-party to assert or bring, any Claim(s) against the Landlord Released Party, including, without limitation, claims for Response Actions, response costs, assessment, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages directly relating to or arising from any Release of Hazardous Materials at, on, or under the Premises that first occurred after the Commencement Date unless such Release was caused by the intentional, reckless, or negligent act(s) or omission(s) of the Landlord Released Party, or any of them.

(b) The Tenant Releasing Party agrees to defend, under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3, and indemnify Landlord and Landlord's successors and assigns (the "***Landlord Indemnified Party***") from and against any claims asserted against the Landlord Indemnified Party for which the Tenant Releasing Party has provided a release under the terms of §20.7(a) (the "***Tenant Indemnified Claim***"). The Tenant Releasing Party shall be notified promptly, in writing, by the Landlord Indemnified Party, of the assertion of any Tenant Indemnified Claim. Subject to the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3, the Tenant Releasing Party shall have control of the defense of any Tenant Indemnified Claim and all negotiations for the settlement or compromise of the Tenant Indemnified Claim, provided that the Landlord Indemnified Party is fully indemnified by the Tenant Releasing Party, and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea) or wrongdoing or negligence, or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Tenant Releasing Party on behalf of the Landlord Indemnified Party, or any other action that would materially prejudice the rights of the Landlord Indemnified Party without the Landlord Indemnified Party's express written approval. The Landlord Indemnified Party shall cooperate fully with the Tenant Releasing Party in the defense of any Tenant Indemnified Claim under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3.

(c) The provisions of this §20.7 shall survive expiration or earlier termination of this Lease.

21. MISCELLANY.

21.1. Limitation of Landlord's Liability. The term "Landlord," as used herein, so far as Landlord's covenants and agreements are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to the Premises. In the event of any conveyance of such fee title, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed, provided that the transferee of Landlord's interest shall expressly agree to be bound by all such covenants and agreements. Except with respect to the liability of a previous owner of the fee title to the Premises, Tenant specifically agrees to look solely to Landlord's then equity interest in the Premises, at the time owned, for recovery of any judgment from Landlord, it being specifically agreed that neither Landlord (original or successor) nor any partner of Landlord (nor any principal of any such partner) shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant, except as aforesaid. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors-in-interest, or to take any action not involving the personal liability of Landlord (original or successor) to respond in monetary damages from Landlord's assets, other than Landlord's equity interest in the Premises. No official, employee, or consultant of the Commonwealth of Massachusetts shall be personally liable to Tenant or to any partner, shareholder, or member of Tenant, or to any successor in interest or person claiming through or under Tenant or any partner, shareholder, or member of Tenant in the event of any default or breach of this Lease, or for any amount that may become due, or any claim, cause, or obligation whatsoever under the terms of this Lease. All claims against Landlord shall be governed by the provisions of this Lease and M.G.L. c. 258.

21.2. Notices from One Party to the Other. Subject to § 11.1, all notices, approvals, consents, requests, and elections required or permitted under this Lease shall be in writing and shall be deemed duly given when delivered by a reputable overnight delivery service, or mailed by registered or certified mail, postage prepaid, addressed, if to Tenant, at the address of Tenant set forth at the beginning of this Lease, or such other address as Tenant shall have last designated by notice in writing to Landlord; if to Landlord, at the address that is set forth in §4.10, or such other address as Landlord shall have last designated by notice in writing to Tenant, with a copy of each notice to Landlord being separately delivered to the General Counsel, Division of Capital Asset Management and Maintenance, 15th Floor, One Ashburton Place, Boston, Massachusetts 02108-1511; if to a Permitted Mortgagee, at such Permitted Mortgagee's address set forth in the copy of the Permitted Mortgagee's Permitted Mortgage delivered to Landlord pursuant to §15.6(b) or such other address as such Permitted Mortgagee shall have last designated by notice in writing to Landlord and Tenant. If either party at any time designates some other person to receive payments or notices under this Lease, all such payments or notices thereafter by the other party shall be paid or given to the agent designated until notice to the contrary is received from the designating party. Any requests for approval made by Tenant to Landlord, where such approval must be given or denied by Landlord within a specified period, shall bear the following legend at the top of the transmittal letter in bold-faced type at least a twelve-point Times New Roman font, with the appropriate deadline for reply filled in: **"NOTICE: THIS REQUEST FOR APPROVAL REQUIRES REPLY WITHIN ___ DAYS."**

21.3. Quiet Enjoyment. Landlord covenants that so long as no Event of Default has occurred and is continuing, Tenant shall quietly have and enjoy the Premises during the Term. Landlord's exercise of self-help pursuant to §7.1, and any exception to title that is of record, as of the Commencement Date, shall not be considered a breach of the covenant of quiet enjoyment.

21.4 Provisions Severable. If any term or provision of this Lease, or the application of such term or provision to any person or circumstance, shall be held to be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected by such holding, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21.5. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

21.6. Memorandum. Landlord and Tenant agree that at the request of the other, each shall execute a short form memorandum of this Lease in form satisfactory for recording in the appropriate Registry of Deeds.

21.7. Entire Agreement. This Lease and the attachments to this Lease contain the entire agreement between Landlord and Tenant, and this Lease may be amended only by a written instrument signed by Landlord and Tenant.

21.8. Captions. The captions in this Lease and in the table of contents of this Lease are inserted only as a convenience and for reference, and they in no way define, limit, or describe the scope of this Lease or the intent of any provision of this Lease.

21.9. References. References to pages, paragraphs, sections, articles, and exhibits are to those in, of, or to this Lease, unless otherwise noted.

21.10. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either Landlord or Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context shall require.

21.11. No Broker. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Lease, and in the event of any brokerage claims against Landlord or Tenant predicated upon prior dealings with the other party, the party purported to have used the broker agrees to defend the same (provided that if Tenant is defending, such defense shall be under the direction of the Attorney General of the Commonwealth of Massachusetts in

accordance with M.G.L. c. 12, § 3) and to indemnify and hold the other party harmless against any such claims.

21.12. Covenants Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors, and assigns, except as otherwise provided herein.

21.13. State Employees Barred from Interest. No official, employee or consultant of the Commonwealth of Massachusetts shall have any personal interest, direct or indirect, in this Lease or Tenant, nor shall any such official, employee, or consultant participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. On or prior to the date of this Lease, Tenant has delivered, to DCAM, Tenant's Beneficial Interest Statement that is attached as *Exhibit L*.

21.14. Nondiscrimination. Tenant agrees that Tenant shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Tenant, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation. If a complaint or claim alleging violation by Tenant of such statutes, rules, or regulations is presented to the Governmental Authority, Tenant agrees that Tenant and Tenant's employees and agents shall cooperate fully with the Governmental Authority in the investigation and disposition of such complaint or claim. Tenant agrees to assume all legal fees and costs in connection with the defense of each such claim. In the event of Tenant noncompliance with the provisions of this §21.14, such noncompliance shall be deemed to be a material breach of this Lease. In accordance with the terms set forth in this Lease and pursuant to Executive Order 227 of the Commonwealth of Massachusetts, Tenant must prepare and submit an Affirmative Action Plan. The Massachusetts Commission Against Discrimination ("MCAD") shall determine compliance by such Affirmative Action Plan with said Executive Order 227. DEM shall have access to all records that are necessary to document compliance with this section in DEM's annual report to MCAD.

21.15. Inaccessibility. Except in emergencies, Landlord must give Tenant forty-eight-hours notice of any action that makes the Premises inaccessible and use reasonable efforts to minimize interference with access to the Premises.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The parties to this Lease have set their hands and seals as of the date first above written.

THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS DIVISION OF
CAPITAL ASSET MANAGEMENT AND
MAINTENANCE, AS LANDLORD

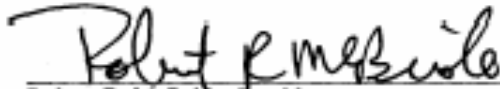
By:



David B. Perini, Commissioner, who certifies
under penalties of perjury that he has fully
complied with the provisions of sections
40F½ and 40H of chapter 7 of the General
Laws in connection with the property
described herein.

FACILITY MANAGEMENT CORPORATION,
AS TENANT

By:



Robert R. McBride, President

Approved as to matters of form:



R. Edward Bulice, Deputy General Counsel for Leasing
Division of Capital Asset Management and Maintenance
The Commonwealth of Massachusetts

EXHIBIT “A” RFP

COMMONWEALTH OF MASSACHUSETTS

Re-Issued

REQUEST FOR PROPOSALS TO PROVIDE LONG-TERM

OPERATION AND MANAGEMENT SERVICES

AND CAPITAL IMPROVEMENTS FOR STATE-OWNED ICE-SKATING RINKS

April 5, 2002

**Division of Capital Asset Management and
Maintenance**

David B. Perini, Commissioner

Department of Environmental Management

Peter C. Webber, Commissioner

THE COMMONWEALTH OF MASSACHUSETTS

Request for Proposals

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APPENDICES

- A. Section 30 of Chapter 88 of the Acts of 2001 (the “Act”)
- B. Skating-Rink Lease form
- C. Proposal Cover Sheet

D. Disclosure Statement

E. List of Conditions and Minimum Required Capital Repairs/Improvements

Section I: Introduction and Invitation to Bid

The Commonwealth of Massachusetts (the "Commonwealth") acting through its Division of Capital Asset Management and Maintenance ("DCAM") on behalf of and in consultation with the Department of Environmental Management ("DEM"), is pleased to present this Request for Proposals ("RFP") for the operation, management and capital improvement of 18 public ice-skating rinks (each a "Rink") owned by the Commonwealth, pursuant to 25-year leases to be granted by the Commonwealth. The Rinks are located throughout the Commonwealth (see Section II of this RFP for Rink locations).

The Commonwealth's goal is to enter into a 25--year Skating-Rink Lease for each Rink with a tenant who will reconstruct and/or rehabilitate the Rink to meet state-of-the-art ice-skating-facility standards, will provide cost-effective, high-quality skating operations in a manner that is sensitive to public recreational needs and reflects the Commonwealth's goal of providing affordable recreation for the public, and will return the Rink to the Commonwealth at the expiration or termination of the Lease in improved condition

Each Skating-Rink Lease is expected to commence on or about June 1, 2002.

The leasing of each Rink is subject to the requirements and guidelines of the authorizing legislation, Section 30 of Chapter 88 of the Acts of 2001 (the "Act"). A copy of the Act is included in this RFP as Appendix A.

The Commonwealth desires to select tenants who:

- Demonstrate the experience and capacity to operate one or more Rinks in accordance with the Act, the Skating-Rink Lease, good rink-management practices and state-of-the-art ice-skating standards.
- Demonstrate the experience and financial capabilities to make significant capital repairs, replacements and/or improvements at the Rinks.
- Best meet the Selection Criteria delineated in Section XI of this RFP.

While the financial aspects of a proposal are very important, DCAM and DEM will consider all Selection Criteria and are not obligated to select tenants solely on a “highest bidder” basis if one or more other proposals better satisfies or satisfy the Selection Criteria and other requirements of this RFP, as a whole.

In addition, it is the goal of DCAM and DEM to ensure that all 18 Rinks remain in operation to serve the public. Accordingly, in selecting a tenant for each Rink, DCAM and DEM will also consider the overall benefits to the Commonwealth. DEM prefers that single operators operate several rinks, in particular, those rinks located within geographical proximity to each other. Nevertheless, DCAM and DEM welcome proposals from municipalities or other entities for individual rinks.

Qualified individuals, corporations (profit or nonprofit), municipalities or organizations are invited to submit proposals to manage and operate one or more Rinks for use by the general public, youth groups, high-school hockey, adult organizations or informal groups, and others. In this RFP, the term “Proposer” refers to any individual, corporation (profit or nonprofit), municipality or organization that submits a proposal in response to this RFP.

Proposals to lease one or more Rinks must be received by DCAM at the address for submissions specified in this RFP **NO LATER THAN 2:00 P.M. (EDT) on April 19, 2002** (the period from the date of this RFP to the deadline date for submitting proposals may hereafter be referred to as the “Proposal Period”). Telecopied (faxed) proposals will not be accepted. Refer to Section X for the proposal-submission requirements.

This RFP and all amendments will be posted on the website of the Commonwealth of Massachusetts at www.comm-pass.com/. This RFP can be made available in other forms, upon request. Contact Jean Maynard at the address set forth in Section XII below.

Neither DCAM nor DEM makes any representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP. This RFP (including all attachments and supplements) is made subject to errors, omissions, withdrawal without prior notice, and changes to, and additional, and different interpretations of, laws and regulations. Prospective tenants should undertake their own review and analyses concerning financial information, physical conditions, environmental conditions, ownership and legal considerations.

Note: Per Executive Order No. 346, employees of the Commonwealth who are involved with the lease process are prohibited from seeking employment with a successful Proposer for a period of five years.

Section II: Rinks

The 18 Rinks are located throughout the Commonwealth, as follows:

<u>Location</u>	<u>Rink Name and Address</u>
Auburn	Daniel S. Horgan Memorial Rink, 400 Oxford St., North
Brockton	John G. Asiaf Memorial Rink, Forest Ave. (behind High School)
Fall River	Arthur R. Driscoll Memorial Rink, 272 Elsbree Street
Franklin	Veterans Memorial Rink, 910 Panther Way
Gardner	Gardner Veterans Rink, 45 Veterans Drive
Greenfield	Collins Moylan Memorial Rink, 1 Barr Avenue
Haverhill	Veterans Memorial Rink, 229 Brook Street
Holyoke	Henry J. Fitzpatrick Rink, 575 Maple Street
Lowell	John J. Janas Memorial Rink, Douglas Road
Marlboro	John J. Navin Rink, 451 Bolton Street
New Bedford	Stephen Hetland Memorial Rink, 310 Hathaway Blvd.
Newburyport	Henry Graf, Jr. Rink, 28 Low Street
North Adams	Vietnam Veterans Memorial Rink, 1010 S. Church St.
Peabody	James McVann-Lois O'Keefe Memorial Rink, 511 Lowell St.
Plymouth	John Armstrong Memorial Rink, Long Pond Road
Springfield	Ray Smead Memorial Rink, 1780 Roosevelt Ave.
Taunton	Theodore J. Alexio, Jr. Rink, Gordon Owen Riverway

Worcester Charles J. Buffone Rink, 284 Lake Avenue

A listing of structures, equipment and other components of each Rink and a listing of the minimum required capital repairs/improvements is attached to this RFP as Appendix E.

In addition, information about each Rink is included in a Rink Package for that Rink.

Such information includes:

- copy of deed to the Commonwealth;
- plan, if available, from DEM's files;
- income and expense data for 1995-2000;
- attendance figures for June 30, 1999 to June 30, 2001;
- list of Rink user groups;
- information regarding Rink structures and equipment.

Some of the information in each Rink Package has been compiled by DEM from financial reports submitted to DEM by current or former Rink managers and other information provided by current or former Rink managers. DEM also receives audited financial statements from such managers, and will make such financial statements available to interested proposers upon request.

Neither DCAM nor DEM makes any representations or warranties, express or implied, as to the accuracy and/or completeness of such information. Prospective tenants should undertake their own review and analyses concerning financial information, physical conditions, environmental conditions, ownership and legal considerations.

To request a Rink Package for one or more Rinks, please contact:

Jean Maynard
Department of Environmental Management-Devens
131 Barnum Rd., Bldg. 3701
Devens, MA 01432
Email: jean.maynard@state.ma.us
Telephone: (508) 792-7716 x110
Fax: (508) 792-7718

Section III: Requirements for Rink Operation and Management

It is the intention of DEM/DCAM to allow the tenant of each Rink (hereafter sometimes referred to as a “Rink tenant”) flexibility, subject to requirements set forth in the Skating-Rink Lease, to most cost-effectively deliver services, with the understanding that affordable recreation for the public is an important Commonwealth goal. To this end, interested parties must submit proposals that reflect the general descriptions set forth below.

Each Proposer selected to lease one or more Rinks shall be required to enter into a Skating-Rink Lease with the Commonwealth in the form attached to this RFP as Appendix B. The following is a summary of some of the Skating-Rink Lease provisions provided for the convenience of proposers. Each Proposer should refer to the Skating-Rink Lease form for details concerning the provisions described below and additional provisions not described in this RFP. Any irreconcilable inconsistency or conflict between this RFP and the Skating-Rink Lease shall be resolved in favor of the Skating-Rink Lease.

Season of Operation

Each Rink tenant must keep the Rink open for ice-skating for a season beginning no later than September 15th of each year and ending no earlier than April 15th of each year during the term of the Skating-Rink Lease for the Rink. Each Rink tenant will be encouraged to operate for longer seasons, as the Rink tenant deems reasonable to satisfy demand for the facility. Proposers are encouraged to propose extended operating seasons.

Any Rink without below-slab insulation must be closed for a minimum of one month per year.

Hours of Operation

Each Rink tenant may establish such hours of operation as the tenant deems appropriate, subject to the requirements of the Act and other local and state laws and ordinances.

User Groups

Ice time at each Rink shall be allocated in the following priority, as set forth in the Act:

- General-public skating
- Youth groups
- High-school hockey
- Adult organizations or informal groups

General-public skating shall be booked at a minimum of 16 hours per week, with a range of times and days as specified in Section 2.2 of the Skating-Rink Lease. The allocation of time for uses other than general-public skating is subject to DEM's prior written approval as set forth in Section 2.2(c) of the Skating-Rink Lease.

The Rink tenant shall honor previously contracted ice-time schedules for the first year of the lease term.

Ice Time Rates

For the first three years of the Skating-Rink Lease term, ice-time fees shall not exceed \$185 per 50-minute ice session, and admission fees for the required public-skating sessions shall not exceed \$6.00 per hour for adults (older than 18 years) and \$3.00 per hour for persons 18 years of age or younger. Subsequent fee increases must be directed or approved by DEM.

If a Rink tenant proposes to increase ice time rates, the Rink tenant shall submit a letter of request to DEM. In considering each request, DEM will consider all factors it deems relevant, including, without limitation, the following:

- Capital investments made by the Rink tenant to the Rink for which the request is made.
- Ice-time rates charged by other rinks (public and private) within reasonable proximity of the Rink for which the request is made.
- The length of time since the last rate increase, if any.
- Rates charged at other Rinks, it being the goal of DEM to ensure that rates at the Rinks are consistent.

Concession Agreements

The Rink tenant may contract for concession services. Upon the expiration of any listed concession-service agreements, the Rink tenant may assume management control of said concessions and may operate them directly or enter into agreements with other parties for the delivery of associated services.

Section IV: Requirements for Capital Improvements, Equipment and Maintenance

Each proposer should refer to the Skating-Rink Lease form for details concerning the provisions described below and additional provisions not described in this RFP.

Rink Facility Conditions and Ice Resurfacing Machines

The 18 Rinks were, for the most part, built in the 1970's. Although some of the major components of the Rink facilities including, without limitation, roofs, and chillers, may have been replaced since a Rink was first constructed, other components may not have been replaced.

A listing of structures, equipment and other components of each Rink in need of capital repair and/or replacement is attached to this RFP as Appendix E.

DEM will, to the extent it deems reasonably feasible, make an ice-resurfacing machine and edger available for temporary use by the tenant operator of each Rink. Such ice-resurfacing machine and edger may be fossil-fuel powered. The tenant for each Rink shall be responsible for providing a non-fossil-fuel-consuming ice resurfacing machine and edger for each Rink, which non-fossil-fuel-consuming machine shall remain the property of the Commonwealth at the expiration or earlier termination of the Skating-Rink Lease for such Rink.

Neither DCAM nor DEM makes any representations or warranties, express or implied, as to the accuracy and/or completeness of such listing or any other information made available by DEM or DCAM. Prospective tenants should undertake their own review and analyses concerning financial information, physical conditions, environmental conditions, ownership and legal considerations.

Documentation regarding the condition of the Rink components is not comprehensive. Information provided in Appendix E and in the Rink Package for each Rink is provided for preliminary informational purposes only and must be independently determined and verified by prospective proposers.

Each proposer selected to lease one or more Rinks shall be required to enter into a Skating-Rink Lease with the Commonwealth in the form attached to this RFP as Appendix B. The following is a summary of some of the Skating-Rink Lease provisions.

Capital Improvements

The selected tenant for each Rink will be required to make capital repairs, replacements and/or improvements to the Rink. Such capital repairs, replacements and/or improvements may

include, without limitation, replacement of the roof, slab and refrigeration systems. Refer to Appendix E and the Rink Package for each Rink for specific information regarding rink conditions and required repairs, replacements and/or improvements. ***Such listing is for informational purposes only and does not constitute a representation that only the listed repairs, replacements and/or improvements and no others will need to be made by the Rink tenant. The Rink tenant will be responsible for any and all capital repairs, replacements and/or improvements which are or may become necessary during the term of the Skating-Rink Lease.***

Each Proposer shall provide for a program of capital repairs and replacements during the entire lease term ("Capital Program"), and identify a revenue source to sufficiently fund both scheduled and unanticipated repair and replacement needs. The Capital Program for each Rink shall, at a minimum, include the Minimum Required Capital Repairs/Improvements, within the time frames, set forth in Appendix E for such Rink. A Proposer may include other improvements, including construction of an additional slab, in such Capital Program if the Proposer so desires. The Capital Program must clearly articulate a schedule of repairs/replacements/improvements for years 1-3, 3-5, 5-10, 10-15, 15-20 and 20-25. The Capital Program for each Rink shall, without limitation, specify when a non-fossil-fuel-consuming ice resurfacing machine and edger will be purchased for the Rink. Said Capital Program shall be attached to and incorporated into the Skating-Rink Lease for the Rink.

All such capital repairs and improvements must be made in accordance with standards established by DCAM. Those standards shall include, at a minimum:

- All work must be performed in accordance with applicable building, safety and other codes.
- Any new slab must be not less than 5.5 inches thick.
- Insulation must be installed below any new slab.
- Any new chiller shall consist of two units on a skid with a capacity of not less than 20 tons.
- Any new roof shall be designed to accommodate snow loads.

The Rink tenant will be required to obtain the prior written approval of DCAM before replacing or reconstructing any major component of the Rink.

Building, Grounds and Equipment Maintenance

Each Rink tenant will be responsible for keeping building and equipment in good working condition, and grounds in presentable and quality condition. All such repairs and replacements must be made in accordance with standards established by DEM.

Proposals must clearly describe in detail a facility maintenance regimen, including, without limitation, a preventive maintenance regimen, that can be tracked and documented.

Subject to articles 13 and 14 of the Skating-Rink Lease, section 8.3 of the Skating-Rink Lease provides that the Rink tenant shall take good care of the Rink, make all repairs to the Rink, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Rink and the sidewalks and curbs in first-class order, repair, and condition (“**Tenant’s Maintenance Obligations**” in the Skating-Rink Lease), reasonable wear and tear excepted. To comply with Tenant’s Maintenance Obligations, the Rink tenant shall covenant to spend, on an annual basis, a minimum of the greater of \$20,000 or 1.5% of the gross receipts of the Rink [called the “**Premises Revenues**” in the Skating-Rink Lease] (whichever is higher, the “**Minimum Annual Maintenance Amount**” in the Skating-Rink Lease), with Premises Revenues that are determined for the purpose of determining the Minimum Annual Maintenance Amount being the same as the Premises Revenues that are determined for the purpose of determining the Percentage Rent under the Skating-Rink Lease. If in any year the cost of Tenant’s Maintenance Obligations exceeds the Minimum Annual Maintenance Amount, the Rink tenant shall nevertheless be obligated, at the Rink tenant’s sole cost and expense, to undertake Tenant’s Maintenance Obligations.

Section V: Other Skating-Rink Lease Requirements

Each proposer should refer to the Skating-Rink Lease form for details concerning the provisions described below and additional provisions not described in this RFP.

Survey, Metes-and-Bounds Description and Boundary-line Drawing

The selected tenant for each Rink shall be required to obtain, at the selected tenant’s cost and expense, and before the execution of the Skating-Rink Lease, (a) the survey that is defined in article 1 of the Skating-Rink Lease, (b) the metes-and-bounds description of the Premises that is mentioned in section 2.1 of the Skating-Rink Lease and shall be set forth on Exhibit E to the Skating-Rink Lease, and (c) the boundary-line drawing of the Premises that is mentioned in section 2.1 of the Skating-Rink Lease and shall be set forth on Exhibit F to the Skating-Rink Lease, each to be prepared by a professional land surveyor who is duly licensed by and registered with the Commonwealth of Massachusetts and is approved by DCAM, with such approval not to be unreasonably withheld, conditioned, or delayed.

Section VI: Financial Requirements

Each proposer should refer to the Skating-Rink Lease form for details concerning the provisions described below and additional provisions not described in this RFP.

PERCENTAGE RENT

Each Rink tenant shall pay a percentage of annual gross revenues (the “**Premises Revenues**” in the Skating-Rink Lease) to the Commonwealth as set forth in Section 4.1 of the Skating-Rink Lease. Such payments are called “**Percentage Rent**” in the Skating-Rink Lease and shall be made in monthly installments.

MANDATORY ENERGY CONSERVATION PAYMENT

Each Rink tenant shall be responsible for the monthly payment of \$1551 per Rink through June 30, 2004 for the costs of a Tax Exempt Lease Purchase payment arising from the installation of energy conservation improvements. Such payments shall be made to the Commonwealth.

TAXES

Each Rink tenant shall be responsible for payment of properly and legally imposed taxes.

REPORTING REQUIREMENTS

Each Rink tenant shall be required to submit monthly and fiscal-year reports, containing the information set forth in Sections 2.2 (n) and 4.1.3 of the Skating-Rink Lease. Each Rink tenant shall also be required to submit audited fiscal year financial statements, which financial statements shall be prepared in accordance with Generally Accepted Accounting Principles.

PERFORMANCE BONDS

Each Rink tenant shall be required to post a one-year performance and payment bond by June 1st of each year during the Term of the Skating-Rink Lease, which the Commonwealth may access to continue operations in the event that the Rink tenant defaults on its obligations under the Skating-Rink Lease. During the first 10 years of the Skating-Rink Lease term, the performance bond shall be in a minimum amount of \$50,000 per Rink. For each of years 11-25 of the Skating-Rink Lease term, the minimum amount of the performance bond shall be adjusted to reflect increases, but not decreases, in the Consumer Price Index.

Each performance bond shall be issued by a surety licensed to do business in Massachusetts and shall state that it is for the benefit of the Commonwealth. Each performance bond must remain in full force and effect until it is superseded by another bond or, in the case of a performance bond in effect at the time of the expiration or earlier termination of the Skating-Rink

Lease term must remain in full force and effect until thirty days after DEM has received the Rink tenant's final financial statement required pursuant to the Skating-Rink Lease.

With respect to any construction, including, without limitation, the Capital Program, the Rink tenant shall provide a construction performance bond in such amount as shall ensure the completion of such construction. Each performance bond shall be issued by a surety licensed to do business in Massachusetts and shall state that it is for the benefit of the Commonwealth and satisfy the other requirements set forth in Section 9.9. of the Skating-Rink Lease.

INSURANCE

Each Rink tenant shall provide insurance in accordance with article 5 of the Skating-Rink Lease.

CASH MANAGEMENT AND INTERNAL CONTROL PROCEDURES

Each Rink tenant shall be required to follow such cash management and internal control procedures as may be approved or required by DEM from time to time during the term of the Skating-Rink Lease.

Section VII: MBE/WBE Participation

DCAM and DEM encourages, to the greatest extent allowed under the law, the active and meaningful equity participation of Minority Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) as certified by (or pending certification, provided that certification is obtained prior to tenant-designation by the Commonwealth) the State Office of Minority and Women Business Assistance (SOMWBA). DCAM and DEM also encourage employment, service provision and materials-provision opportunities for women and minorities. Proposers should state any minority or women equity or employment, services and/or materials participation proposed.

Section VIII: [INTENTIONALLY OMITTED]

[this section dealt with site visits]

Section IX: Required Proposal Contents

All Rink management proposals must include the information and materials described below.

A separate Proposal should be submitted for each Rink.

A. Letter of Transmittal

The proposal must include a one-page letter of transmittal signed by the principal(s) of the proposer and addressed to:

Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, MA 02108-1511

Envelopes must be marked:

**Proposal for the leasing of a DEM Rink. Do not open until 2:00 PM (EDT)
on April 19, 2002.**

B. Proposal Cover Sheet

The proposal must include a completed Proposal Cover Sheet in the form included in this RFP as Appendix C.

C. Statement Regarding Other Rinks, if any, for which the Proposer is submitting a Proposal.

The Proposal should include a statement as to whether the Proposer is submitting a proposal for any other Rink. If the Proposer is submitting proposals for any other Rink, said statement shall include the following:

- Name and location of each other Rink.
- Statement of whether the Proposal is contingent upon the Proposer being selected as the Rink tenant for some or all of the listed Rinks.

D. The Proposer/Tenant

Each proposal must include a description of the Proposer and, if the proposed Rink tenant will be other than the Proposer, a description of the proposed Rink tenant. Such description must include the following information:

1. The name, address and telephone number of the Proposer/Rink tenant, the name of any representative authorized to act on his/her/its/their behalf, the name of the contact to whom all correspondence should be addressed, and the names and primary responsibilities of each principal of the Proposer/Rink tenant and of each person who will have management responsibility for the Rink.
2. If the Proposer/Rink tenant is not an individual doing business under his/her name, a description of the firm and status of the organization (e.g. whether a for-profit, not-for-profit or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association or joint venture) and the jurisdictions in which it is registered to do business.
3. The nature of the entity to execute the Skating-Rink Lease and the borrower and guarantors, if any.
4. Identification of all principals, partners, co-venturers participating in the transaction, and the nature and share of the participants' ownership in and compensation from the project.
5. Confirmation that no local, state or federal taxes are due and outstanding for the Proposer/Tenant or any principal thereof.
6. Identification of all Minority-Owner Business Enterprises and Women-Owned Business Enterprises that are SOMWBA-certified, or that have an application for SOMWBA-certification pending (provided that certification is granted by the time of provisional designation of the developer by the Commonwealth), that will have equity shares in the project, and the percentage of project employment participation by minority individuals or Minority Business Enterprises, and by women and Women Business Enterprises.
7. Information regarding any legal or administrative actions past, pending or threatened that could relate to the conduct of the proposer's (or its principal's or its affiliate's) business and/or its compliance with laws and other governmental requirements.
8. A completed Disclosure Statement in the form of Appendix D

E. RINK MANAGEMENT EXPERIENCE AND REFERENCES

A summary of the Proposer's/Tenant's experience, collectively and individually, with ice skating rink management, including of public skating rinks, as well as other recreational facilities. Such summary shall include information regarding:

- 1. Rates charged**
- 2. Services provided**
- 3. Capital repairs, replacements and/or improvements made.**

Listing of past clients or organizations for which Proposer has provided similar services. DEM reserves the right to contact any references submitted. Include the name and telephone number of the contact person for each reference.

F. MANAGEMENT APPROACH

Proposer must describe Proposer's approach to the performance of the services requested. The description should include a discussion of the qualifications of the personnel responsible for executing financial supervision, Rink management and maintenance and ice-time booking. Describe in detail:

1. Proposed season of operation
2. Proposed hours of operation
3. Priority access approach: discuss how organization will accommodate priority to general skating, youth groups, high school hockey, and adult organizations or informal groups, in accordance with the Act, the Skating-Rink Lease and otherwise.
4. Proposed fees.
5. Organizational chart for proposed Rink management. Resumes and position descriptions of staff members who will be assigned to the program.
6. Program Expansion: discuss new program initiatives and marketing strategies to expand user base, including children's and senior citizen programming.

7. A statement of the Proposer's equal employment policy, as required by law.

1. **G. CAPITAL REPAIR AND REPLACEMENT PROGRAM; IMPROVEMENTS** Provide a proposed Capital Program of capital repairs, replacements and/or improvements during the entire term of the Lease. The Capital Program for each Rink shall, at a minimum, include the Minimum Required Capital Repairs/Improvements, within the time frames, set forth in Appendix E for such Rink. The Capital Program may include other improvements, including construction of an additional slab. The Capital Program must clearly articulate a schedule of repairs/replacements/improvements for years 1-3, 3-5, 5-10, 10-15, 15-20 and 20-25. The Capital Program for each Rink shall, without limitation, specify when an electric-powered ice resurfacing machine and edger will be purchased for the Rink. Identify funding for implementation of proposed scheduled capital repairs, replacements and/or improvements, and for other unanticipated Rink needs.

2. Resumes and position descriptions of staff members or others who will supervise construction of the Capital Program.

H. MAINTENANCE PROGRAM

Provide a proposed facility-maintenance regimen that can be tracked and documented for keeping the building and equipment in good working condition, and the grounds in presentable and quality condition.

I. PERCENTAGE RENT

Proposer shall propose **Percentage Rent** pursuant to article 4 of the Skating-Rink Lease.

J. FINANCIAL MANAGEMENT AND BUDGET

Provide the following information:

1. Operating budget: Proposer must submit a proposed first year annual operating budget for the Rink. The budget should include detailed assumptions about hours of operation; hours booked; rates in compliance with terms above; revenue estimates from group rentals, public skating and events; operating cost

estimates; repair; maintenance, reserve performance bond cost estimates; and overhead, profit and insurance expenses.

2. Detailed information to demonstrate the Proposer's ability to finance the Capital repairs, replacements and improvements to be made by the Proposer.
3. A financial plan, presenting a detailed description of all "sources and uses" of funds as well as a statement and plan for financing the proposal.
4. A development budget for the proposed capital improvements, including hard and soft construction costs and a ten year pro forma analysis of the proposed facility management project.
5. A detailed description of the Proposer's cash management and internal control procedures.
6. Resumes and position descriptions of staff members who will oversee the Proposer's cash management and internal control procedures.
7. Audited financial statements for Proposer's last fiscal year OR a reasonable substitute AND an explanation why audited statements are not available.
8. Certificate of Tax Compliance
9. Banking references. DEM and DCAM reserve the right to contact any references submitted. Include the name and telephone number of the contact person for each reference.

Section X: Proposal Submission Requirements

To comply with this RFP, seven (7) complete copies of each proposal must be **received by DCAM** at the following address on or before 2:00 PM (EDT) on April 19, , 2002.

Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, MA 02108-1511

Envelopes **must** be marked:

Proposal for the leasing of a DEM Rink. Do not open until 2:00 PM (EDT) on April 19, 2002.

PROPOSALS RECEIVED BY DCAM LATER THAN 2:00 PM (EDT) on April 19, 2002 WILL BE DEEMED NON-RESPONSIVE AND WILL BE REJECTED. Proposals will be time-stamped by DCAM as they are received, and DCAM's time stamp will be controlling. If delivered late in person, delivery will be refused; if delivered late by mail, each such late proposal will be returned to its respective sender. TELECOPIED, FAXED OR ELECTRONICALLY-MAILED (E-MAILED) PROPOSALS WILL BE DEEMED NON-RESPONSIVE AND WILL BE REJECTED, REGARDLESS OF THE DATE RECEIVED.

Proposals will be opened on April 19, 2002 at 2:00 PM (EDT) in the offices of DCAM.

DCAM will not accept any information or materials submitted after the Submission Deadline unless said information or materials are provided in response to DCAM's written request for such information or materials.

These requirements will be strictly enforced. Proposers are cautioned to hand deliver their proposals to or to allow sufficient time for their proposals to be received by mail or other delivery service.

Section XI: Evaluation Criteria and Selection Process

NOTE: IN REVIEWING PROPOSALS, DCAM AND DEM WILL ALSO CONSIDER THEIR GOAL OF ENSURING THAT ALL 18 RINKS REMAIN IN OPERATION TO SERVE THE PUBLIC. ACCORDINGLY, IN SELECTING PROPOSERS FOR EACH RINK, DCAM AND DEM WILL ALSO CONSIDER THE OVERALL BENEFITS TO THE COMMONWEALTH.

All proposals will receive preliminary review for adherence to the Commonwealth's submission requirements. In its sole discretion, the Commonwealth may reject any proposal that does not include the proper submissions or does not address all proposal-submission requirements. The Commonwealth reserves the right to request clarification on any material submitted, and to waive minor informalities in proposals.

Proposals that pass such preliminary review will be evaluated in accordance with the following evaluation criteria:

Evaluation Criteria: (While all of the following criteria are important, Items B and F are the most important of the criteria.)

A. The Proposer's experience in:

- Providing cost-effective, high-quality skating operations in a manner that is sensitive to public recreational needs;
- Maintaining rinks in good order and repair; and
- Making significant capital repairs, replacements and/or improvements.

B. The Proposer's capacity to:

- Operate the Rink in accordance with the Act, the Skating-Rink Lease, and state-of-the-art ice-skating standards;
- Provide cost-effective, high-quality skating operations including, without limitation, experience in equipment and refrigeration repair and maintenance;
- Maintain the Rink in good order and repair, .
- Make significant capital repairs, replacements and/or improvements.
- Provide an improved Rink to the Commonwealth at the expiration or earlier termination of the Skating-Rink Lease.

C. Management plan components:

- Compliance with DEM priorities for ice allocation;
- Proposed season and hours of operation;
- Qualifications of personnel.
- Cash management and internal control procedures.

D. Marketing and Program expansion;

- Clarity of Market identification;
- Innovative and targeted programming;
- Variety of recreational programs.

E. The value and compliance with DEM priorities for a capital repair and replacement program:

- Itemized priority of scheduled repairs and improvements;
- Actual value of committed improvements and replacements; and
- Sources of funding.

F. The Proposer's financial strength, including, without limitation:

- Ability to meet operating and capital expenditures, including emergencies;
- Substantiated liquid assets;
- Documented availability of credit; and
- Quality of banking references

Ability of the Proposer to successfully and timely perform the proposed capital improvements. Such a determination is a function of the Proposer's qualifications and ability to carry out the capital improvements successfully (as evidenced by the Proposer's professional record, overall financial qualifications, etc.) as well as the extent to which the plan is feasible.

G. Proposed Percentage Rent Amount

H: Minority business participation:

- Identification of level of minority participation

Selection Process:

Presentations and Interviews: Following a review of the Proposals that are timely and otherwise properly submitted, DEM and DCAM may choose to conduct interviews with selected Proposers. The purpose of any interview will be to clarify proposals and evaluate the qualities, expertise and facility/program concepts of the Proposer.

DCAM and DEM will evaluate proposals based on: the information provided in a Proposer's submission in accordance with the submission requirements of this RFP, any interviews, references and additional information requested by DCAM; any other information from publicly available and verifiable sources; and any other information in the possession of DCAM and/or DEM.

In the selection process, DCAM and DEM reserve the right to negotiate with any or all proposers, to waive any minor informalities in proposals, to reject any or all proposals and to reject portions of proposals and to select other proposals) or issue a new request for proposals, for any reason deemed appropriate by DCAM and DEM, in order to serve the best interests of the Commonwealth, including, without limitation, the Commonwealth's goal of selecting tenants for all 18 of the Rinks. In the event that no acceptable proposals are received for one or more Rinks (individually, an "orphan Rink"), DCAM and DEM reserve the right to request, in writing, after the deadline for submission of proposals under this RFP and their review of proposals received by such deadline, that any proposer(s) which submitted a proposal for any other Rink or Rinks, submit a proposal for any such orphan Rink. In submitting a proposal for an orphan Rink, a proposer may modify terms of any proposal submitted for any other Rink prior to the deadline for submission of proposals.

Upon selection of a tenant for a Rink, DCAM/DEM will notify the tenant.

Section XII: Questions during the Proposal Period

All questions during the Proposal Period must be submitted, in writing, not less than eight days before the deadline for submission of proposals. Questions should be directed to:

Jean Maynard
Department of Environmental Management-Devens
131 Barnum Rd., Bldg. 3701
Devens, MA 01432

Email: jean.maynard@state.ma.us
Telephone: (508) 792-7716 x110
Fax: (508) 792-7718

DEM WILL REPLY TO APPROPRIATE QUESTIONS NOT LESS THAN FOUR DAYS BEFORE THE PROPOSAL DEADLINE. TO BE DEEMED “APPROPRIATE”, THE QUESTION MUST ADDRESS A MATTER THAT REQUIRES, IN THE SOLE OPINION OF DEM, INTERPRETATION OR CLARIFICATION BY DEM. ANSWERS WILL BE POSTED ON THE DEM WEB PAGE ([HTTP://WWW.STATE.MA.US/DEM](http://www.state.ma.us/dem)). ANY VERBAL INTERPRETATIONS GIVEN TO PROSPECTIVE PROPOSERS WILL HAVE NO AUTHORITY OR EFFECT WHATSOEVER.

APPENDIX A

Section 30 of Chapter 88 of the Acts of 2001

SECTION 30. Said chapter 159 is hereby further amended by striking out section 366 and inserting in place thereof the following section:-

Section 366. The division of capital asset management and maintenance, on behalf of, and in consultation with, the department of environmental management, may, notwithstanding sections 40E to 40K, inclusive, of chapter 7 of the General Laws and utilizing such competitive proposal process as the commissioner of said division deems necessary or appropriate, to lease and enter into other agreements, for terms not to exceed 25 years, to 1 or more proponents, for 1 or more skating rinks so as to provide for the continued use, operation, maintenance, repair and improvement of all of the following state-owned buildings and facilities together with the land and appurtenances associated therewith: Representative John G. Asiaf skating rink, Brockton; Arthur R. Driscoll memorial skating rink, Fall River; Veterans memorial skating rink, Franklin; Stephen Hetland memorial skating rink, New Bedford; John A. Armstrong memorial skating rink, Plymouth; Theodore J. Aleixo, Jr. skating rink, Taunton; Veterans Memorial Skating Arena, Haverhill; John J. Janas Memorial Skating Rink, Lowell; Henry Graf, Jr., Skating Rink, Newburyport; James E. McVann and Louis F. O'Keefe Memorial skating rink, Peabody; Daniel S. Horgan Memorial Skating Rink, Auburn; Gardner Veterans Skating Rink, Gardner; John J. Navin skating rink, Marlboro; Honorable Charles J. Buffone Skating Rink, Worcester; Greenfield Area Skating Rink, Greenfield; Henry J. Fitzpatrick skating rink, Holyoke; Ray Smead Memorial Skating Rink, Springfield; and Vietnam Veterans Memorial Skating Rink, North Adams. Such leases and other agreements shall be on terms acceptable to the commissioner of capital asset management and maintenance after consultation with the commissioner of environmental management and, notwithstanding any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any lease or other arrangement requiring improvements to be made to any buildings may include a description of the initially required improvements and, at a minimum, performance specifications. Ice time at department of environmental management owned skating rinks shall be allocated to user groups in the following priority order: general public skating; youth groups; high school hockey; and adult organizations or informal groups. Ice time may be allocated at the discretion of the lessees with the following restrictions: general public skating shall be booked at a minimum of 16 hours per

week, with a range of times and days which reasonably allow for public skaters of all ages to participate in some public skating sessions. Every effort shall be made to balance the ice allocation needs of long-established youth organizations and newly formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender. Leases and other agreements shall provide that any benefits to the communities and the costs of improvements and repairs made to the properties provided by the lessees or the recipients of the properties shall be taken into account as part of the consideration for the leases or other agreements. All consideration received from the leases or other agreements shall be payable to the department of environmental management for deposit into the Second Century Fund, established in section 2EE of chapter 29 of the General Laws. The recipients of the properties shall bear all costs deemed necessary or appropriate by the commissioner of capital asset management and maintenance for the transactions, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

APPENDIX B

Skating-Rink Lease Form

APPENDIX C

Proposal Cover Sheet

DEM Skating-Rink Lease

Attached is a proposal for the leasing of the DEM Skating-Rink listed below. The undersigned proposes to lease said Rink from the Commonwealth of Massachusetts upon the terms and conditions set forth in the Request for Proposals dated April 5, 2002, the Skating-Rink Lease form, and the terms and conditions set forth in this proposal.

The undersigned agrees that all expenses related to the preparation of this proposal, including, without limitation, any costs related to any brokerage or third party representation, engaged by the undersigned, are at the undersigned's sole expense.

The undersigned has read, understands, and agrees to comply with the terms and conditions set forth in the Commonwealth's Request for Proposals dated April 5, 2002.

Skating-Rink for which this Proposal is submitted: _____

(Signature)

(Date)

Print Name: _____

Organization: _____

Address: _____

Telephone: _____

APPENDIX D

Disclosure Statement

LEASING OF DEM SKATING-RINK

For the leasing of Real Property by the Commonwealth of Massachusetts the undersigned does hereby state, for the purposes of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

- (1) REAL PROPERTY:
- (2) TERM:
- (3) LESSOR: The Commonwealth of Massachusetts by its Division of Capital Asset Management and Maintenance on behalf of its Department of Environmental Management
- (4) LESSEE:
- (5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the property as Lessee.

<u>NAME</u>	<u>RESIDENCE</u>
-------------	------------------
- (6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth, except as listed below.

Signed under the penalties of perjury.

Name: _____

Date: _____

Title: _____

APPENDIX E

List of Conditions and Minimum Required Capital Repairs/Improvements

Neither DCAM nor DEM makes any representations or warranties, express or implied, as to the accuracy and/or completeness of the following information. Prospective tenants should undertake their own review and analyses.

Auburn

Conditions:

Slab: Indirect glycol system, no leaks, no corrosion detected in half-cell potential test, no sediment evident in glycol samples. No heaving or floor movement detected.

Chiller: Flooded R-22 chiller, new compressors 2.5 years ago.

Roof: Poor condition, many patches and some structural decay along perimeter. New leaks appeared spring 2001.

Dashers: Maintained but decaying in some areas, need to be replaced.

Zamboni: Poor condition

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters need to be replaced with more efficient units over the coming years. Increased dehumidification capability is needed for the summer months. Boiler in fair condition.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Install new HVAC system
- Replace “boards”

- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Brockton

Conditions:

Slab: Indirect system, poor condition, extensive subsurface heaving that prevents an extended operating season and exposes the piping to excessive stress and possible leaks. Heavy heaving occurred last winter, has thawed and lowered this spring. The extensive movement of the slab is a serious concern, danger of pipe rupture.

Chiller: Direct expansion R-22 Worthington system. All four compressors rebuilt/reconditioned operates, but is outdated.

Roof: Replaced 1990.

Dashers: Maintained but decaying in some areas, need to be replaced.

dition (1967 model). Extensive decay of the steel frame.

HVAC: Systems working but prone to breakdowns/difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Increased dehumidification capability is needed for the spring and summer months. Bleacher heaters installed-work. Boiler-new in 1996.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-polluting ice resurfacing machine and edger
- Install new ice slab and refrigeration
- Install dehumidifier
- Replace "boards"

During Years 1-5 of the Lease Term:

- Install new HVAC system

- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Fall River

Conditions:

Slab: Indirect glycol system, no leaks, no corrosion detected in half-cell potential test, no sediment evident in glycol samples. No heaving or floor movement detected.

Chiller: Direct expansion R-22 Acme API system. All four compressors rebuilt over the last 3 years. New evaporative condenser in 1997.

Roof: Very poor condition, many patches, continuous new leaks and slight

structural decay along perimeter. Perimeter repaired in places this spring. Main roof remains in “critical” condition.

Zamboni: Fair condition, rebuilt two years ago.

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Increased dehumidification capability is needed for the summer months. Bleacher heaters installed-work.. Boiler - new in 1999.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).
- Install new ice slab and refrigeration

Franklin:

Conditions:

Slab: Direct R-22 system, very poor condition, annual leaks repaired. New leaks detected and repaired this past May (shutdown). Slab remains the most critical.

Chiller: Direct R-22 liquid feed to floor. Operates but is prone to leaks and is outdated. New condenser was installed four years ago.

Roof: Poor condition, many patches and some structural decay along the perimeter. New leaks appeared recently inside arena and over boiler room off lobby.

Zamboni: Fair condition, new engine and transmission.

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units. Bleacher heaters installed – work. Boiler operates but is in poor condition, need to be replaced.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Install new ice slab and refrigeration
- Replace “boards”

During Years 1-5 of the Lease Term:

- Install new HVAC system
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).
- Replace roof

Gardner:

Slab: Indirect glycol system, no leaks, no corrosion detected in half-cell potential test, no sediment evident in glycol samples. No heaving or floor movement detected.

Chiller: Flooded R-22 chiller, compressors need to be replaced (parts no longer

available), in operating condition. Compressors in need of replacement due to obsolescence of parts.

Roof: Very poor condition, failing on all sections of main arena roof and significant structural decay along perimeter.

Parking: Lot is in very poor condition, extensive heaving and subsurface failure causing potholes and humps. Needs to be removed and replaced with a new subsurface drainage system, new drainage base and asphalt overlay.

Zamboni: Fair condition

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Boiler in excellent condition - replaced 1999.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Construct new parking lot, including without limitation, new drainage and paving
- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Greenfield:

Roof: Roof is in poor condition, needs replacing along with rot damage

Slab: Needs to be replaced along with the refrigeration system

Bleachers: Need to be replaced

Boards: All dasher boards need replacement

Doors: Two garage doors need replacement vestibule doors and glass

Matting: Rubber matting needs to be replaced

Zamboni: Poor condition

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Install new bleachers
- Replace “boards”
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

Haverhill:

Slab: Replaced in October, 1996

Refrigeration: Good

Boards: Good

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace “chiller barrel”

During Years 1-5 of the Lease Term:

- Install new HVAC system
- Replace “boards”
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

Holyoke:

Roof: Roof is in poor condition, needs replacing along with rot damage.

Refrigeration: System needs to be rebuilt.

Bleachers: Need to be replaced.

Boards: All dasher boards need replacement.

Doors: Three garage doors need replacement vestibule doors and glass.

Matting: Rubber matting needs to be replaced.

Zamboni: Poor condition.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace score board

During Years 1-5 of the Lease Term:

- Replace roof
- Replace “boards”
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

Lowell:

Slab: Needs Replacement

Refrigeration: Needs new system

Bleachers: Need to be replaced

Boards: Poor condition

Doors: *Need four pair of entry way*

Zamboni: Needs to be replaced

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Install new ice slab and refrigeration

During Years 1-5 of the Lease Term:

- Repave parking lot
- Replace “boards”
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

Marlboro:

Slab: Direct R-22 system, very poor condition, annual leaks repaired.

Chiller: Direct R-22 liquid feed to floor. Operates but is prone to leaks. compressors are weak and parts for overhaul are not available.

Roof: Very poor condition, extensive structural decay along perimeter. Lower (lobby) being replaced.

Dashers: Maintained but need to be replaced.

Zamboni Poor condition.

HVAC: System working but prone to breakdowns and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Increased dehumidification capability is needed for summer months. Boiler new as of 8/1/01. Lobby/office and team room heaters new as of 8/10/01.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Replace "boards"
- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

New Bedford:

Slab: Two years old, thermal lag.

Chiller: Direct expansion Acme DDRC-250 system. Runs but not very efficient.

Roof: Very poor condition, many patches and extensive structural decay along perimeter. Small section of roof over the incinerator room collapsed, was repaired but it is in critical condition.

Zamboni: Fair condition - new transmission.

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Boiler in poor condition, operates but needs to be replaced.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

During Years 1-5 of the Lease Term:

- Repave parking lot
- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Newburyport:

Slab: Very poor condition/needs replacement

Refrigeration: Needs new system

Bleachers: Should be replaced

Boards: Need to be replaced

Doors: Poor condition need/garage/entryway

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Install new ice slab and refrigeration
-
- Replace “boards”

During Years 1-5 of the Lease Term:

- Repave parking lot
- Install new HVAC system
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

North Adams:

Slab: Poor condition, major frost heave-over 8" in three different places.

Roof: Poor condition, major leaking on both main and secondary roof.

Rink Boards: Some have been replaced, but all should be.

Zamboni: Works, but is a 1978 model.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Install new ice slab
- Replace roof

During Years 1-5 of the Lease Term:

- Replace "boards"
- Repave parking lot
- Provide new nonfossil-fuel-consuming ice resurfacing machine and edger
- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Peabody:

Roof: Poor Condition- needs replacement over ice surface bad.

Bleachers: *Poor condition-all need replacement*

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Replace bleachers
- Replace roof

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Repave parking lot
- Install new HVAC system

Plymouth:

Slab: Indirect glycol system, no leaks, no corrosion detected in half-cell potential test, no sediment evident in glycol samples. No heaving or floor movement detected.

Chiller: Direct expansion R-22 Acme API system. All four compressors replaced over the last 6 years. New evaporative condenser in 1996.

Roof: Fair condition, some patches and slight structural decay along perimeter. New leaks appeared recently inside the arena by the men's room. Will attempt to repair.

Zamboni: Fair condition, new engine.

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Boiler in fair condition, should be replaced in the near future.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Replace roof
- Repave parking lot
- Install new HVAC system
- Provide adequate men's and women's locker rooms (men's and women's facilities must be of comparable quality).

Springfield:

Slab: Needs to be replaced

Refrigeration: System needs to be rebuilt

Bleachers: Need to be replaced

Boards: All dasher boards need replacement

Doors: Eight garage doors need replacement

Matting: Rubber matting needs to be replaced

Zamboni: Poor condition

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Install dehumidifier
- Replace “boards”

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Install new HVAC system
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

Taunton:

Slab: Direct R-22 system replaced in 1993. Leaks in the tubing the last two years in a row. Classified as needing replacement in the next five years.

Chiller: Direct R-22 liquid feed to floor. Operates but is prone to leaks and is outdated. New condenser six years ago.

Roof: Very poor condition, falling on all section of main arena and lobby roofs.

Zamboni: Fair condition

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters should be replaced with more efficient units over the coming years. Increased dehumidification capability is needed for the summer months. Bleacher heaters installed and work. Boiler new in 1998. Storage tank needs to be replaced.

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger
- Replace roof

Worcester:

Slab: Indirect system, fair condition, slight subsurface heaving at ends that prevents an extended operating season and exposes the piping to excessive stress and possible leaks.

Chiller: Direct expansion R-22 Worthington system. All four compressors rebuilt/reconditioned, system outdated. New condenser three years ago.

Roof: Replaced in 1990.

Dashers: Maintained but decaying in some areas, need to be replaced.

Zamboni: Poor condition

HVAC: Systems working but prone to breakdown and difficult to find parts. Heaters need to be more efficient units. Increased dehumidification capability is needed for the summer months. Boiler in poor condition .

Minimum Required Capital Repairs/Improvements

During Year 1 of the Lease Term:

- Provide new non-fossil-fuel-consuming ice resurfacing machine and edger

During Years 1-5 of the Lease Term:

- Install new ice slab and refrigeration
- Replace “boards”
- Repave parking lot
- Provide adequate men’s and women’s locker rooms (men’s and women’s facilities must be of comparable quality).

EXHIBIT B

ARBITRATION PROCEDURE

Whenever it is expressly provided in this Lease that a dispute between the parties shall be determined by arbitration, such dispute shall be submitted to arbitration as follows:

1. No arbitrable dispute shall be deemed to have arisen under this Lease before the expiration, without resolution by the parties of the dispute, of ten days after the party asserting the existence of the dispute gives written notice of the dispute to the other party, together with a written description of the dispute that is sufficient for an understanding of the dispute by the other party.
2. Impartial arbiters shall determine each arbitrable dispute.
3. At the time of selection as an arbiter, a person shall be, for not less than ten years in Eastern Massachusetts, (a) a commercial-building owner, or (b) a real-estate counselor, or (c) a broker dealing with commercial-real-estate properties.
4. Landlord shall select one arbiter, Tenant shall select one arbiter, and, if necessary, a third arbiter shall be selected in the manner provided in item 7.
5. Landlord and Tenant each shall notify the other of the identity of its selected arbiter on the business day that immediately follows the ten-day period provided in item 1.
6. The unanimous written decision of the first two arbiters selected, without the selection and participation of a third arbiter, shall be conclusive and binding upon Landlord and Tenant.
7. If the first two arbiters selected by Landlord and Tenant fail to reach an unanimous decision within thirty days after the notifications provided in item 5, the arbiters shall request that the Boston office of the American Arbitration Association (or if such entity or a successor entity no longer exists, then the Boston office of an entity that provides arbitration services and is mutually satisfactory to Landlord and Tenant) designate an arbiter, qualified as provided in item 3, to act as the third arbiter.
8. If a third arbiter is selected in accordance with item 7, the arbiters shall hear, subject to the commercial arbitration rules of the American Arbitration Association, the parties and their evidence, shall render, in accordance with item 9, the written decision of the arbiters within thirty days following the conclusion of such hearing, and shall notify Landlord and Tenant promptly of the written decision.
9. If a third arbiter is selected in accordance with item 7 and participates in accordance with item 8, the written decision of two of the three arbiters shall be conclusive and binding upon Landlord and Tenant.
10. The arbiters shall determine, in their award or decision, the costs and expenses of each arbitration under this procedure and their apportionment between the parties.

EXHIBIT "C"

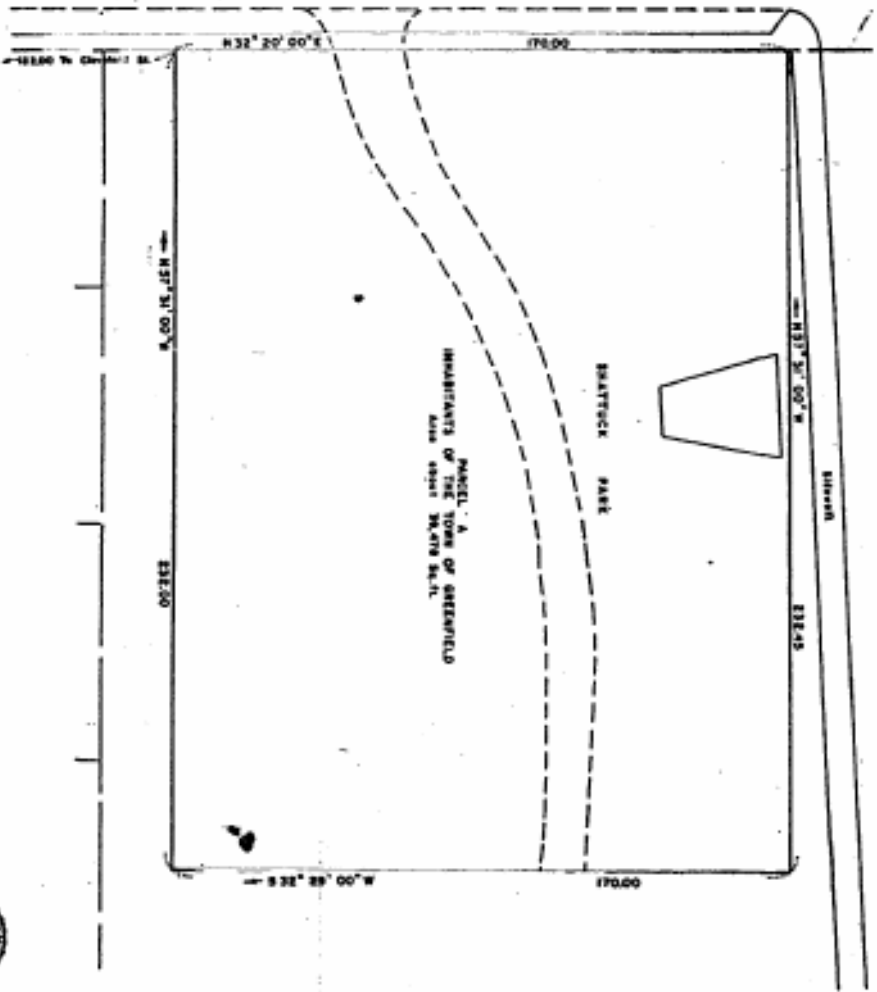
LOCATION MAP (NOT REPRODUCED ON LINE)

EXHIBIT "D"

CURRENT SITE MAP

Plan Book 34 Page 29

GREENFIELD - 1970- ONE SHEET



FRANKLIN COUNTY
REGISTRY OF DEEDS
JAN 29 11 46 AM 1970
RECEIVED FOR RECORD
GREENFIELD, MASS.

A TRUE COPY-ATTEST
CLERK T. D. O'S
MIL. PUBLIC WORKS COMMISSION
RECORDS OF PUBLIC WORKS
COMMONWEALTH OF MASSACHUSETTS



This is a true copy of the original plan of land as shown to the Registry of Deeds for the Town of Greenfield, Massachusetts, on January 29, 1970, and is a true copy of the original plan of land as shown to the Registry of Deeds for the Town of Greenfield, Massachusetts, on January 29, 1970.

The Commission of Massachusetts
PLAN OF LAND IN THE TOWN OF
GREENFIELD
FRANKLIN COUNTY
Showing location of land shown to the
Department of Public Works for
Public Improvement Projects
January 29, 1970
By: [Signature]

EXHIBIT "E"

METES AND BOUNDS OF PREMISES

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC WORKS

---ooOoo---

557

Order of Taking

The Department of Public Works, acting on behalf of the Commonwealth of Massachusetts, under authority of Chapter 432 of the Acts of 1966, and all other acts or parts of acts thereto enabling, does hereby take under the provisions of Chapter 79 of the General Laws, a certain parcel of land in the town of Greenfield, county of Franklin, hereinafter described as Parcel "A", and shown on the plan hereinafter referred to, for the purpose of constructing certain recreational facilities, said land being taken in fee simple, including all trees and structures located thereon (not, however, including poles, towers, lines, wires, cables and other appurtenances for the conveyance of electricity and telephone communication), excepting from the rights herein taken all easements for wires, pipes, conduits, poles and other appurtenances for the conveyance of water, sewage, gas, oil and electricity and for telephone communication now lawfully in or upon said premises hereby taken.

Parcel A. A parcel of land supposed to be owned by the inhabitants of the Town of Greenfield, adjoining the existing southeasterly street line of Barr Avenue and bounded by a line beginning at a point on said street line, 152.00 feet distant northeasterly (as measured along said street line) from Cleveland Street and extending thence following said street line N32°20'00"E 170.00 feet; thence leaving said street line south 57°31'00" east 232.45 feet; thence south 32°29'00" west 170.00 feet; thence north 57°31'00" west 232.00 feet to the point of beginning; containing about 39,478 square feet.

The Following is Certified To Be A True Copy Of
The Record in Book 6653 Page 557
Franklin County MA Registry of Deeds
Date: 12-10-81 Attest: Attest: [Signature]
REGISTER

558 1970

in Greenfield

Page 2

For damages sustained by the Inhabitants of the Town of Greenfield in their property by reason of the aforesaid taking and in accordance with the provisions of General Laws, Chapter 79, Section 6, as amended, an award is made. The Department reserves the right to amend the award or to increase the amount of damages to be paid at any time prior to the payment thereof for good cause shown.

The name of the owner herein given, although supposed to be correct, is such only as a matter of opinion and belief.

The parcel of land hereinbefore described is shown on a plan signed by Daniel S. Horgan, Chief Engineer, and signed by the Department of Public Works and on file in its office, said plan being entitled: "The Commonwealth of Massachusetts Plan of Land in the Town of Greenfield Franklin County Showing location of land taken by the Department of Public Works for Public Recreational Facilities January 21, 1970

Scale: 40 feet to the inch", an attested copy of which is to be recorded with this order of taking in the Registry of Deeds for Franklin County at Greenfield.

Dated at Boston this twenty-first day of January, 1970

A.G.S.

_____	Members
_____	of the
_____	Public Works
_____	Commission

See next page.....

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE SECRETARY

BOSTON January 21, 1970

I hereby certify that at the date of this attestation hereto annexed ~~BAHBB/RI/BAHBB~~, Robert S. Foster, Charles A. Bisbee, Jr., Peter E. Donadio ~~AAA/BAH/TA/TAH~~ were members of the Public Works Commission, and are Commissioner and Associate Commissioners, respectively, Department of Public Works, duly appointed and qualified and that to their acts and attestations, as such, full faith and credit are and ought to be given in and out of Court, and, further, that their signatures to the annexed instrument are genuine.

In testimony of which I have hereunto affixed the Great Seal of the COMMONWEALTH the dated above written.



John F. Dawson
Secretary of the Commonwealth

Franklin St. Reg'd for record // 11:44 AM Jan. 29, 1970

EXHIBIT "F"

BOUNDARY-LINE DRAWING OF THE PREMISES

NOT APPLICABLE

EXHIBIT "G"

CAPITAL PROGRAM

*Wenfield
FMC*

PROPOSED PROJECTS & IMPLEMENTATION DATES

The following table outlines the Minimum Initial Improvements we propose to implement at the Collins Moylan Memorial Rink over the 25 years of the lease agreement. Each project will be explained in greater detail after the chart. Projects have been scheduled on a timetable that prioritizes components in the worst condition. We are confident that the schedule we are proposing is reasonable and provides for uninterrupted operation as the result of unanticipated failures. The budget amounts we are using reflect in most cases hard proposals from highly qualified contractors and suppliers. We receive considerable discounts as the result of the volume and excellent payment relationship we have with vendors and contractors. We have adjusted the amounts each year to account for inflation.

Note that Start Date on the chart refers to the date upon which the project will begin. The length of time to complete the project will be dependant upon the size and scope of it. We project the ice slab and refrigeration projects to take a combined 4 months (including concrete cure time). The building additions will take approximately 3 to 4 months. We anticipate the roof replacements to take 3 to 4 weeks to complete. Most other projects will last less than 1 month and some may be as short as a day (equipment purchases).

The Project line of the chart describes the nature of the improvement. The Equip line denotes net equipment purchase cost (including finance charges). Facility line signifies facility upgrade / improvement cost. Total is the aggregate amount of equipment and facility improvement / repair costs.

MINIMUM INITIAL IMPROVEMENTS TIMETABLE & BUDGET

Year	Start Date	Project	Equipment	Facility	Total
1	11/1/2002	Electric Zamboni & Ice Edger	97,680.00	-	97,680.00
2	7/1/2003	New Roof, Fascia & Soffit	-	245,000.00	245,000.00
2	6/1/2003	New Bleachers	91,575.00	-	91,575.00
3	6/1/2004	New Dasher Boards and Tempered Glass	94,017.00	5,000.00	99,017.00
8	6/1/2009	HVAC Replacement	-	46,448.27	46,448.27
8	6/1/2009	New Boiler and Storage Tanks	-	25,734.68	25,734.68
9	5/1/2011	Emergency Generator	14,338.15	-	14,338.15
12	5/1/2014	Arena Dehumidification / Heat	68,117.09	9,179.12	77,296.21
12	5/1/2014	New Ice Slab & Piping	-	607,068.19	607,068.19

330K

Year	Start Date	Project	Equipment	Facility	Total
12	5/2/2014	New Chiller System	298,762.66	-	298,762.66
16	5/1/2018	Paving the Parking Lot	-	65,000.00	65,000.00
16	5/1/2018	Female Dressing Rooms - inside the arena.	-	196,813.00	196,813.00
17	5/1/2019	Life Safety Improvements	-	25,000.00	25,000.00
17	5/1/2019	Restroom Renovations	-	35,000.00	35,000.00
18	5/1/2020	Exterior lighting	-	15,000.00	15,000.00
18	5/1/2020	Water Reclamation	-	60,000.00	60,000.00
18	5/1/2020	Front Renovations	-	100,000.00	100,000.00
18	5/1/2020	New Entranceways & Windows	-	125,000.00	125,000.00
20	5/21/2022	Arena Renovations	-	150,000.00	150,000.00
			\$ 664,489.90	\$ 1,710,243.25	\$ 2,374,733.15

EXHIBIT "H"

There are NO approved sub-tenants.

EXHIBIT "I"

RECOGNITION AGREEMENT (NOT APPLICABLE)

EXHIBIT "J"

There are NO plans.

EXHIBIT "K"

There are NO plans.

EXHIBIT L
Disclosure Statement

LEASING OF DEM SKATING-RINK

For the leasing of Real Property by the Commonwealth of Massachusetts the undersigned does hereby state, for the purposes of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

- (1) REAL PROPERTY: Collins-Moylan Skating Rink - Greenfield, MA
- (2) TERM: 25 years
- (3) LESSOR: The Commonwealth of Massachusetts by its Division of Capital Asset Management and Maintenance on behalf of its Department of Environmental Management.
- (4) LESSEE: Facility Management Corporation
- (5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the property as Lessee.

<u>NAME</u>	<u>RESIDENCE</u>
Robert R. McBride	65 Homestead Lane, Hanover, MA 02331
- (6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth, except as listed below.

Signed under the penalties of perjury.

Name:

Robert R. McBride

Date:

5-23-02

Title:

PRESIDENT

FACILITY MANAGEMENT CORPORATION

17 Accord Park Drive, Norwell, MA 02061

(781) 982-8166

EXHIBIT M

CERTIFICATE OF TAX COMPLIANCE

As corporate Treasurer, I hereby certify that Facility Management Corporation whose principal place of business is located at 17 Accord Park Drive, Norwell, MA 02061 has complied with all laws of the Commonwealth of Massachusetts and the federal government related to all corporate matters and taxation and has no outstanding obligation to the Massachusetts Department of Revenue or the Internal Revenue Service. The federal identification number for the corporation is 04-3168324.

The undersigned certifies that under the pains and penalties of perjury, that the information contained in the above statements is true and accurate to the best of his knowledge.

Robert R. McBride

Robert R. McBride
Facility Management Corporation

5-1-02

Date

Then personally appeared me the above named Robert R. McBride who being duly sworn, deposed and said that they are persons names herein, who signed the foregoing, and that statements therein are true, and that this is their free act and deed.

Sharon A. Neerman

Notary Public

My commission expires Aug 16, 2004



